SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. —

THE FEDERAL CROP INSURANCE CORPORATION, PETITIONER

VS.

A. A. MERILL AND N. D. MERRILL, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

INDEX

	Original	Print
Record from District Court in and for the County of Bonneville, Idaho	A	1
Reporter's transcript	A	1
Appearances	1	1
Statement by Court	2	2
Opening statement by Mr. Holden	2	2
Testimony of—		
A. A. Merrill	3	3
Adrian A. Merrill, Jr	44	27
M. W. Smith	45	28
A. A. Merrill (recalled)	53	34
J. E. Wheeler	107	69
J. R. Sayer	112	72
A. A. Merrill (recalled)	121	77
L. J. Ward	122	78
Motion to dismiss and denial thereof	126	81
Testimony of—		
John P. Mix	128	82
A. A. Merrill (recalled)	136	86
Motions for directed verdict and nonsuit and denial thereof	137	87
Instructions of the Court to the jury	139	88
Plaintiff's requested instructions	154	97
Defendant's requested instructions	163	103

	Original	Print
Record from District Court, etc.—Continued		
Reporter's transcript—Continued		
Reporter's certificate [omitted in printing]	167	105
Order sustaining general demurrer and overruling special demurrer	168	105
Amended complaint	169	106
Exhibit "A"—Application for wheat crop insurance	177	111
Exhibit "A-1"—Letter accepting application for wheat crop insurance	181	114
Exhibit "B"—Contract summary for 1945	183	116
Exhibit "C"—Letter dated August 7, 1945 from A. A. Merrill to Chairman Bonneville County A. C. A.	186	117
Exhibit "D"—Report of inspection	187	118
Exhibit "E"—Statement in proof of loss	189	119
Demurrer to amended complaint	193	121
Minute entry overruling demurrer	196	123
Order overruling general and special demurrer	197	123
Motion to strike	198	124
Order denying motion to strike	200	125
Minute entry on motion to strike	201	125
Answer to amended complaint	202	126
Order setting cause for trial	208	130
Minute entries of trial	209	130
Verdict of the jury	215	134
Judgment on verdict	216	134
Notice of appeal	217	135
Undertaking on appeal	218	135
Praecipe for record	219	136
Motion for and order for transcript	221	136
Admissions of service of notice of appeal, praecipe for transcript and reporter's transcript	223-225	137, 138
Stipulation settling reporter's transcript	227	138
Order settling reporter's transcript	228	139
Clerk's certificate [omitted in printing]	229	139
Proceedings in Supreme Court of Idaho	231	139
Announcement of composition of Court	231	139
Minute entry of argument	232	140
Opinion, Porter, J	233	140
Judgment	238	144
Clerk's certificate [omitted in printing]	239	144
Order allowing certiorari		145

A In the District Court of the Ninth Judicial District of the State of Idaho, in and for the County of Bonneville

Civil No. 6356

A. A. MERRILL AND N. D. MERRILL, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS., PLAINTIFFS

vs.

THE FEDERAL CROP INSURANCE CORPORATION, A CORPORATION, DEFENDANT

Reporter's transcript

Trial at Idaho Falls, Idaho, March 18, 19, 1946

Before Hon. C. J. TAYLOR, District Judge, and a jury

Mr. John A. Carver, U. S. Attorney for Idaho; Mr. E. H. Casterlin, Assistant U. S. Attorney for Idaho, Attorneys for Defendant.

Holden and Holden, and Mr. A. A. Merrill, Idaho Falls, Idaho, Attorneys for Plaintiffs.

1 Be it remembered, that on this eighteenth day of March Nineteen hundred, forty-six, this cause came on for trial before the Honorable C. J. Taylor, Judge of the Ninth Judicial District of the State of Idaho, sitting with a jury, at Idaho Falls, in the County of Bonneville, State of Idaho.

Appearances

Mr. Arthur W. Holden, of the firm of Holden and Holden, of Idaho Falls, Idaho, and Mr. A. A. Merrill, of Idaho Falls, Idaho, appearing as counsel for the plaintiffs; Mr. E. H. Casterlin, Assistant United States Attorney for the District of Idaho, and Mr. Ariel L. Crowley, of Portland, Oregon, appearing as counsel for the defendant.

Court convened at ten o'clock, A. M., and the following proceedings were had and made a matter of record:

The COURT. The case of Merrill and Merrill against the Federal Crop Insurance Corporation is now called for trial. Are the parties ready? Is the plaintiff ready?

Mr. MERRILL. The plaintiff is ready.

Mr. CASTERLIN. The defendant is ready.

At this time, if the court please, I ask to have the name of Ariel L. Crowley entered as associate counsel for the defendant.

The COURT. Very well, it is so ordered. The jurors will stand and be sworn.

(The Clerk then administered the oath on voir dire to the jury panel.)

2 *Statement by Court*

The COURT. I will state for the information of the jurors that this is an action brought by A. A. Merrill and N. D. Merrill, co-partners, doing business under the firm name and style of Merrill Brothers, as plaintiffs against the Federal Crop Insurance Corporation, a corporation, defendant.

The plaintiffs here are represented by Mr. Arthur W. Holden and Mr. A. A. Merrill, one of the partners; and the defendant is represented by Mr. E. H. Casterlin, of the United States District Attorney's Office, and Mr. Ariel L. Crowley.

The action is brought by the plaintiffs to recover on an insurance policy covering a crop of wheat, the plaintiffs alleging that they made application for this insurance to cover wheat grown during the cropping season of nineteen forty-five, and the defense contends that the wheat grown was not covered by the policy; the plaintiff contending, of course, that there was a loss payable under the policy, and the defense' contention is that the wheat was not covered.

You may call twelve names, if you will, please.

(A jury of twelve persons was then impaneled and sworn to try this cause.)

The COURT. All right, the plaintiff may open.

Mr. HOLDEN. We better make a brief statement.

The COURT. Yes.

Opening Statement of Mr. Holden

Mr. HOLDEN. If your Honor please, and counsel, and gentlemen of the jury. This is an action brought upon an insurance policy against the defendant corporation, to recover for the loss of crops which we claim were insured for the year nineteen forty-five. We submitted proof of loss in accordance with the regulations of the defendant corporation, complied with the rules and
3 regulations of the contract, and suffered this loss. That we paid the premium for the policy, and that it was accepted by the defendant corporation, and that they refused to pay the loss. And that's why we are here today. When we have proven those facts by a preponderance of the evidence, we will expect the jury to render a verdict in favor of the plaintiffs for the amount which we have claimed.

The COURT. Call your witness.

Mr. HOLDEN. We will call Mr. Merrill.

A. A. MERRILL, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. HOLDEN:

Q. You may state your name.

A. A. A. Merrill.

Q. And residence?

A. Idaho Falls, Idaho.

Q. And occupation?

A. I am an attorney by vocation, and my avocation is farming and stock raising.

Q. I will ask you if you are a member of the plaintiff copartnership doing business under the firm name and style of Merrill Brothers?

A. I am.

Q. And the plaintiff partnership is engaged in farming operations in this county?

A. That is correct.

Q. And how long have you been in—so engaged?

A. I have been engaged in farming fifteen years in this county, and with my brother about four years.

Q. And what is your brother's name?

4 A. N. D. Merrill—Nathan D. Merrill.

Q. And that's the gentleman that sits next to me, your copartner?

A. That's right.

Q. I will ask you if you had a business transaction with the defendant along the latter part of March, Nineteen forty-five——

A. Yes.

Q. With reference to insurance on your crops in this county?

A. That's right.

Mr. HOLDEN. I wonder if you would supply me with the original of that application and contract?

Mr. CASTERLIN. We do not have the original, Mr. Holden. We have admitted that the copy attached to the amended complaint is correct, and there is no objection to it.

Mr. HOLDEN. All right. That's the one I will offer then.

Mr. CASTERLIN (handing document to Mr. Holden). Mr. Holden, this copy is identical with the copy attached to the amended complaint.

Mr. HOLDEN. Yes?

Mr. CASTERLIN. There is no objection on the ground that that is a copy.

Mr. HOLDEN. All right. If you will mark this as "plaintiff's Exhibit A" for identification.

(Plaintiffs' Exhibit A, Applicant's Copy of Application for Wheat Crop Insurance, marked for identification by reporter.)

By Mr. HOLDEN:

5 Q. Calling your attention to this instrument marked for the purpose of identification "plaintiffs' Exhibit A," I will ask you to state briefly what it is?

A. (Examining Exhibt A.) This is the application for wheat crop insurance with the defendant, Federal Crop Insurance Corporation; it is dated May the twenty—it's dated March the twenty-sixth, Nineteen forty-five.

Q. And you signed that instrument where?

A. I signed it in the office of AAA office in Bonneville County, Idaho.

Mr. HOLDEN. We will offer plaintiff's Exhibit A in evidence.

Mr. CASTERLIN. To which offer the defendant objects on the ground that at this stage the Exhibit is incompetent and immaterial for any purpose whatsoever. And in this connection I ask permission of the court to interrogate the witness in aid of an objection.

The COURT. Very well.

By Mr. CASTERLIN:

Q. Mr. Merrill, you are an attorney?

A. That's right.

Q. And I will ask you—or, I will call your attention to the Federal Register of February seventh, Nineteen forty-five, which is Volume Ten, Number Twenty-seven, at page one-five-eight-six, where appears under Title Seven—Agriculture, Wheat Crop Insurance Regulations, Part four-one-four——

Mr. HOLDEN. We object to the question——

Mr. CASTERLIN. I am not quite finished yet, counsel.

By Mr. CASTERLIN:

Q. I will ask you whether or not this application (in-
6 dicating Exhibit A) was submitted by you in accordance with that regulation [indicating Exhibit Three]?

A. I can't answer that.

Mr. HOLDEN. Just a moment. We object to the question——

A. Pardon me.

Mr. HOLDEN. For the reason it is incompetent, irrelevant, and immaterial, and not asked for the purpose for which counsel has stated.

Mr. CASTERLIN. I assure the court that it is asked for that purpose, and if counsel will answer the question—or, if the witness will answer the question he will find it is my purpose.

The COURT. He may answer.

A. Read me that question, Mr. Poole, please.

REPORTER (reading): "Question: I will call your attention to the Federal Register of February seventh, Nineteen forty-five, which is Volume Ten, Number Twenty-seven, at page one-five-eight-six, where appears under Title Seven—Agriculture, Wheat Crop Insurance Regulations, Part four-one-four, I will ask you whether or not this application was submitted by you in accordance with that regulation?"

A. I don't know, because I never saw the reguations at that time, and I don't know what they contained. All I did was sign the blank application that was presented to me by the office girl.

By Mr. CASTERLIN:

Q. Then Mr. Merrill, I take it that you did not submit your application in accordance with that application [sic]?

7 A. I submitted my application in accordance with the request made by the AAA Board, as I have stated, Mr. Casterlin.

Mr. CASTERLIN. Just a moment. At this time I move that the answer be stricken on the ground it is not responsive, your Honor.

Mr. HOLDEN. We submit that it is responsive. And we submit further that this is a matter that they have pleaded, an affirmative answer, and that is the time, we insist, that they take it up, and not while we are submitting our proof in our case in chief.

The COURT. I think the answer may stand, as far as given.

By Mr. CASTERLIN:

Q. Mr. Merrill, my question is, did you submit this application in accordance with that regulation?

A. I have shown you, Mr. Casterlin, I have just stated I don't know. I submitted—I signed the application that was presented to me, which is Exhibit A, and I have never seen any rules or regulations until they were presented to me last fall at the time the insurance company declined to pay the insurance. That's the first I ever say of the application—or, I should say, that's the first I ever saw of these so-called rules and regulations.

Q. So you don't know whether this application was submitted in accordance with that regulation?

A. I don't know, because I never saw the rules and regulations, and they were not presented to me at that time.

Mr. CASTERLIN. Now, at this time, if the court please, we

8 object to the admission of the Exhibit, and the reason is that "Upon acceptance of an application by a duly authorized representative of the corporation, the insurance contract shall be in effect, provided such application is submitted in accordance

with the provisions of the application and of these regulations, including any amendments thereto." Now, our point is that unless the application is submitted in accordance with the regulations there is no application, whatsoever.

Mr. Holden. We submit, your Honor——

The Court. Just a moment. It will be admitted.

(Plaintiffs' Exhibit A received in evidence by order of the Court.)

By Mr. Holden:

Q. Now, Mr. Merrill, I believe you mentioned the Three A Office; is that the Agricultural Conservation Committee Office that you refer to, downstairs in this courthouse?

A. Yes; that's correct, Mr. Holden.

Q. Now, do you know who are the members of the Agricultural Conservation Committee in this county, and who were the Committee in Nineteen forty-five?

A. I don't know that I can state who they are now, but in Nineteen forty-five, they were Mr. Ward, was the chairman, and Mr. Wheeler was a member of the board, and Mr. Steele was a member of the board.

Q. Well, give us their first names. Is that Mr. J. E. Wheeler?

A. That's right.

Q. What was Mr. Ward's name?

A. Mr. Ren Ward. I have forgotten his initials.

A Voice. L. J.

9 A. L. J.; that's right.

By Mr. Holden:

Q. Who was the other member of the committee?

A. William G. Steele.

Q. Now, do you recall the date that you signed plaintiffs' Exhibit A in the office of the Agricultural Conservation Committee?

A. As I remember it, it was March the twenty-sixth, Nineteen forty-five.

Q. Do you recall who was present in the office when you signed plaintiffs' Exhibit A?

A. Yes; there was—there was Mr. Ward, and Mr. Wheeler, and Mr. Sayer, and of course all of the office girls; the particular girl that handed me the instrument to sign, I don't know her name, but I know her when I see her.

Q. You mentioned a Mr. Sayer. What Mr. Sayer?

A. Mr. J. R. Sayer.

Q. What, if you know, was his duties or office at that time?

A. He was the secretary.

Mr. CASTERLIN. Just a moment. We object to this question on the ground it calls for hearsay.

The COURT. He may answer.

A. He was the secretary.

By Mr. HOLDEN:

Q. Of the committee that you just mentioned?

A. That's right.

Q. I will ask you now, at the time that you signed plaintiffs' Exhibit A if you had any conversation regarding your proposed insurance with members of the committee?

10 Mr. CASTERLIN. To which question we object on the ground it is improper, and cannot either tend to prove or disprove any of the allegations in this amended complaint, and is not competent for any purpose, whatsoever, for the reason that under the regulations no statement on the part of the agent or anyone is binding, except the same be in writing, and then becomes a part of the application for the crop insurance, as shown by this wheat crop insurance regulation, which appears in Ten Federal Register, at page one-five-eight-five, Section four-one-four, point four-two, which provides that "No notice to any county committee or representative of the Corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect of or change in any part of the insurance contract or to estop the corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation."

Mr. HOLDEN. These matters were all gone into on demurrer and motion, your Honor.

The COURT. He may answer.

A. Yes; I had two or three different conversations just prior to March the twenty-sixth, Nineteen forty-five, and also a conversation on March the twenty-sixth, Nineteen forty-five with members of the board.

By Mr. HOLDEN:

Q. And in the office of the board?

A. Yes; right here in the courthouse.

Q. Just relate that conversation.

Mr. CASTERLIN. To which we object on the ground the
11 proper foundation has not been laid. Who was present, Mr. Holden?

Mr. HOLDEN. He stated that. I asked him that before.

Mr. CASTERLIN. Well, will you tell me who they were?

Mr. HOLDEN. I will let him recite it.

By Mr. HOLDEN:

Q. Who was present, Mr. Merrill?

A. Mr. Ward was present, and Mr. Wheeler was present, and Mr. Sayer was present, and a young lady who seemed to be the head bookkeeper I don't recall her name, but she was the one who presented to me the application to be signed after the conversation.

Mr. CASTERLIN. Very well. No objection.

By Mr. HOLDEN:

Q. Just state the conversation.

A. I went into the office for the purpose of discussing this matter with those gentlemen, and they were all present, and my remarks were made, I suppose, to all of them, they were all three there, and I told them that——

Mr. CASTERLIN. Just a moment. We object to anything that was told them, on the ground it is attempting to alter the terms of a written contract orally—to alter the terms, orally, of a written contract.

The COURT. I understand this was before the contract; is that right?

A. Yes; right before the contract was signed.

The COURT. Before the application was signed?

A. That's right.

The COURT. He may answer.

Mr. CASTERLIN. Am I to understand that this was a con-
12 versation, as I understand it, after the signing of the application?

A. No; before, Mr. Casterlin.

Mr. CASTERLIN. Oh. Very well.

A. I had been asked down to the office to join forces with the rest of the farmers in this insurance program; and I went in and I told Mr. Ward that I had come in to investigate the insurance. He asked me what crops we had, and I told him we had about four hundred and sixty acres that would be planted to Early Bart spring wheat, that four hundred acres of that amount was——

Mr. CASTERLIN. Just a moment. I hate to interrupt, but this is for the purpose of the record. If the court please, may I ask the witness a question in aid of an objection?

The COURT. Yes.

By Mr. CASTERLIN:

Q. Mr. Merrill, calling your attention to paragraph seven of your amended complaint, which reads: "That shortly prior to and at the time plaintiffs made application for said insurance, as aforesaid, they fully informed the defendant, that all of said lands above described, excepting sixty acres thereof, had been planted to fall wheat in the fall of Nineteen forty-four and that said wheat had completely winter killed and that all of said land above described would be planted to number two soft white early Bart spring wheat in the spring of Nineteen forty-five; that defendant then and there represented to, informed and told said plaintiff, that all of the said wheat crop so to be planted on said above-described land was eligible for insurance for the year Nineteen forty-five, and that defendant would insure said
13 crop, provided same was planted to spring wheat." I want to ask you if it was a fact that all but sixty acres of this wheat was replanted on fall seeding?

Mr. HOLDEN. We object to the question for the reason it is not in aid of any objection. We have a right to submit our proof in the manner that we desire to do it. This is not a question in aid of any objection, at all. I am going to bring that out, and I will prove it, what was done.

Mr. CASTERLIN. All I asked, Mr. Holden, was if it is a fact that all but sixty acres of this wheat was reseeded on fall seeding.

Mr. HOLDEN. I am going to ask that question before the witness leaves the stand.

Mr. CASTERLIN. I request that it be asked at this time. Except it is confined to the sixty acres of wheat on the ground which is entirely within the terms and conditions of the application, as submitted and accepted under the regulations, and that the crop, or any other crop, except that planted on the sixty acres, is unquestionably not covered by the insurance policy. I think we can save time by getting this matter settled right now; and as quick as these questions are settled, then there will be no further objection.

The COURT. Well, I don't think the order of proof will make any difference, that is, to shorten the matter any. The objection is to the question now before the witness?

Mr. CASTERLIN. Yes; he has been asked to relate a conversation, and the conversation will run to all of the acreage, as I understand it; and I am objecting to any testimony that runs to any wheat except that which is planted on the sixty acres, or which is the sixty acres mentioned in paragraph seven.

14 The COURT. I think if your anticipation of the conversation is correct, that it will, in itself, determine that. He may answer.

A. I don't remember where I was in the middle of that conversation, when the objection was made.

Mr. HOLDEN. Would you read the last question and answer, please?

REPORTER (reading): "Question: Just state the conversation.

"Answer: I went into the office for the purpose of discussing this matter with those gentlemen, and they were all present, and my remarks were made, I suppose, to all of them, they were all three there, and I told them that—I had been asked down to the office to join forces with the rest of the farmers in this insurance program; and I went in and I told Mr. Ward that I had come in to investigate the insurance. He asked me what crops we had, and I told him we had about four hundred and sixty acres that would be planted to Early Bart spring wheat, that four hundred acres of that amount was——"

A. Planted during the fall of Nineteen forty-four, on summer fallowed ground, and had winter killed; that we had recultivated it, and was in the act then of planting it to Early Bart spring wheat. He informed me that we—that they couldn't insure winter wheat, and I told him we had no winter wheat, but we were planting four hundred and sixty acres of spring wheat, and the particular kind, as I have stated, was Early Bart. They told me then that they could insure the Early Bart spring wheat, and would be glad to do it. The conversation then drifted into the kind of

15 spring wheat that was proper to plant. Mr. Wheeler said that they had been planting some various kinds of spring wheat in their locality, and I think Mr. Sayer said that they had been planting some in his locality. I told them that it had been our experience that Early Bart spring wheat was probably the safest kind to plant, and they informed me that the Federal Crop Insurance Company would be glad to insure the four hundred and sixty acres of Early Bart spring wheat. Whereupon Mr. Sayer asked the girl to get an application, and she got the application, the original of which is plaintiffs' Exhibit A [sic], and handed it to me, and I signed it in blank. I think that was about the sum and substance of the conversation at that time.

By Mr. HOLDEN:

Q. Now, at the time you signed plaintiffs' Exhibit A did the defendant, or this committee give you a copy of the application?

A. No; I didn't receive a copy of it until about a couple of months later when it was mailed to me from the Denver office.

Q. You signed the application, plaintiffs' Exhibit A, but you received no copy of it at that time?

A. That's correct.

Q. Now, then after having signed the application, plaintiffs' Exhibit A, and after having had the conversation with the members of the Agricultural Conservation Committee, as you have testified, what did you do; what did the plaintiffs do?

A. Well, we proceeded to finish planting our crop, and nothing more was done until we received our copies of the contract back, that is, Exhibit A.

Q. Did you sow this Early Bart wheat on the lands mentioned and described in your complaint?

16 A. That's right; we——

Mr. CASTERLIN. To which we object on the ground it is incompetent, irrelevant, and immaterial, and is now disclosed by the plaintiff's own testimony that the wheat was not planted in conformity with Section four-one-four point three-seven of the regulations, which appears at Ten Federal Register, at page one-five-nine-one, and is not wheat within the definition of the application or the regulation, the two together forming the insurance contract.

The COURT. He may answer.

Mr. HOLDEN. Would you please read him the question?

REPORTER (reading): "Question: Did you sow this Early Bart wheat on the lands mentioned and described in your complaint?"

A. Yes; we sowed four hundred and sixty acres of Early Bart wheat on the lands described in the complaint; and, also, that same wheat was sowed on the same lands that I pointed out to the committee on March the twenty-sixth, Nineteen forty-three [sic], from a map of our holdings that I showed them at that time.

By Mr. HOLDEN:

Q. And four hundred acres of this was a reseed job?

A. That's right. But I don't wish to be understood to say that four hundred acres of that was reseeded on winter wheat acreage in the Nineteen forty-five crop year. I say that four hundred acres of that was sowed on land that had been sown to Turkey Red wheat in the fall of Nineteen hundred and forty-four.

Q. And the other sixty acres was sowed on what?

17 Mr. CASTERLIN. To which we object on the ground it is incompetent, irrevelant, and immaterial.

The COURT. He may answer.

A. The other sixty acres was sowed on summer fallowed land, sowed on land that had never theretofore been sowed into wheat.

By Mr. HOLDEN:

Q. How long had you had the land mentioned and described in the complaint?

A. About four years; four or five years.

Q. How long have you known this land?

A. I have known it——

Mr. CASTERLIN. In order not to be continuously objecting, may it be understood that there is a continual objection to all questions and all testimony which runs to any wheat except that sowed on the sixty acres mentioned in paragraph seven of the amended complaint; that is to say, that there is an objection to any testimony concerning any of the wheat which was planted not within the definition in Section four-one-four point three-seven-five [sic] of the regulation which appears at Ten Federal Register, page one-five-nine-one?

The COURT. Yes; the record may show that objection.

Mr. HOLDEN. Now, where were we?

A. I think you asked how long I have known this land, Mr. Holden.

By Mr. HOLDEN:

Q. Yes; how long have you known it?

A. I have known this particular section of the country out there for about fifteen or sixteen years.

18 Q. And during that particular time was any of it cropped before, outside of the four hundred acres that you had sowed in the fall of Nineteen forty-four?

A. Not to my knowledge. I am sure it was not.

Q. I believe you said that you sowed that to Early Bart spring wheat?

A. That's right.

Q. Was that the kind of crop that is designated in plaintiffs' Exhibit A?

A. Yes; in plaintiffs' Exhibit A it is designated as number two soft white wheat, which is Early Bart wheat.

Q. Now, calling your attention to plaintiffs' Exhibit A, I will ask you to state when your application for insurance was accepted by the defendant corporation?

A. (Examining Exhibit A.) Well, it was signed by me on March the twenty-sixth——

Q. No; I am asking you about when it was accepted by the Federal Crop Insurance Corporation?

A. (Examining Exhibit A.) On the twenty-eighth day of—No. On May the twenty-eighth, Nineteen forty-five. It's perforated, and I believe that's—It says, "Five, twenty-eight, forty-five, Denver, Colorado."

Q. All right. That would be what date?

A. That would be May the twenty-eighth, Nineteen forty-five.

Q. Now, when did you get your copy of the plaintiffs' Exhibit A?

A. Well, shortly after that date. I don't recall just the exact date, but just a few days after that they mailed be a copy of Exhibit One [sic], after they had accepted it, and they also mailed us a letter of acceptance at the same time.

19 Mr. HOLDEN. Will you mark this "Plaintiffs' Exhibit A-One," for identification?

(Plaintiffs' Exhibit A-One, a mimeographed letter, no date, no addressee, signed C. B. Holmes, Branch Manager, marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs'— to this instrument marked for identification "Plaintiffs' Exhibit A-One," I will ask you to state briefly what it is?

A. (Examining Exhibit A-One.) It's a letter of acceptance which Merrill Brothers received from the Federal Crop Insurance Corporation on or about May the twenty-eighth, Nineteen forty-five, at the time they sent to us a copy of Exhibit One [sic]. This letter was inclosed with that copy, and it is signed by C. B. Holmes, Branch Manager, of the defendant corporation.

Mr. CASTERLIN. We object to the offer——

Mr. HOLDEN. I haven't offered it yet. I just want to show it to you.

Mr. CASTERLIN. Oh. All right. I know what it is.

By Mr. HOLDEN:

Q. Now, plaintiffs' Exhibit A, and this instrument marked "Plaintiffs' Exhibit A-One," for identification, was received by you through the United States Mail in the same envelope both these instruments?

A. Yes; that's right.

Q. And they came from the defendant corporation's office in Denver, Colorado?

A. Yes. I didn't save the envelope. I had no occasion

20 to, of course.

Mr. HOLDEN. That's all right. We offer in evidence the plaintiffs' Exhibit A-One, your Honor.

Mr. CASTERLIN. That's a copy of the Exhibit that is attached to the amended complaint?

Mr. HOLDEN. Yes.

Mr. CASTERLIN. To which offer we object on the ground it is immaterial, until it is first established that the application was submitted in accordance with Section four-one-four point three-seven

of the wheat insurance regulations appearing in Ten Federal Register, at page one-five-eight-five.

The COURT. It will be admitted.

(Plaintiffs' Exhibit A–One received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. Did you ever receive any other regulations, of any kind, from the defendant corporation, or any of its agents, other than the two instruments which I hold in my hand, plaintiffs' Exhibit A and plaintiffs' Exhibit A–One?

Mr. CASTERLIN. To which question we object upon the ground it is incompetent, irrelevant, and immaterial, and on the ground that the plaintiffs are charged with knowledge of all the regulations, by virtue of the Federal Register Act—the National Federal Register Act.

The COURT. He may answer.

A. No. Yes; I will have to qualify that answer by saying that I received no other rules or regulations, or anything else of a written nature, at the time I received the two instruments you have in your hands; but late in the fall of last year, at the time
21 they were going to pay the insurance, Mr. Mix gave me a copy of the rules and regulations, which was the first time I ever saw their so-called rules and regulations.

By Mr. HOLDEN:

Q. That was after you suffered loss?

A. That's right.

Q. And after proof had been made?

A. That's right. At that time was the first time I ever saw any of their rules or regulations. In fact, I assumed all the time that——

Mr. CASTERLIN. We object to that as not—as incompetent, irrelevant, and immaterial, and not responsive, and he is charged with the knowledge of that law.

The COURT. Yes; sustained as not responsive.

By Mr. HOLDEN:

Q. Now, how did this crop progress after it was planted?

A. It made a very rapid normal growth; the germination, I think, was exceptionally good; we planted as near as we could get certified seed, and we had good moisture, and it grew until about—I imagine about the first of July when we didn't get any rain after that, and the crop simply dried right up, and we weren't able to harvest only but a little of it.

Mr. HOLDEN. Will you mark this instrument "Plaintiffs' Exhibit B," for identification?

(Plaintiffs' Exhibit B, County Office Final Copy of "Contract Summary for 1945," marked for identification by reporter.)

By Mr. HOLDEN:

Q. Now, Mr. Merrill, according to the regulations set forth in plaintiffs' Exhibit A–One, I will ask you if your were required to report the acreage, after the crop had been seeded?

22 A. (Examining Exhibit A–One.) Yes; according to this letter, it tells us what we must do in case of a loss; and I think we followed the instructions given us by the corporation in this letter, exactly; at least, we tried to.

Q. Now, I will ask you if under the regulations here, or instructions [indicating Exhibit A–One], you reported the acreage?

A. (Examining Exhibit A–One.) Yes; it says: "As soon as possible after the wheat crop is seeded, submit to your county Triple A committee, on a form which will be provided by the county Triple A office, a report showing the spring wheat acreage seeded and the percent interest you have in the crop."

Q. You complied with that, did you?

A. Yes; we went and told them how many acres we had planted.

Q. Handing you plaintiffs' Exhibit B, so marked for identification, I will ask you to state what that is, briefly?

A. (Examining Exhibit B.) That's a contract summary report for Nineteen forty-five, showing the number of units that we had planted, and the amount of our premium, and the date of it, which was June the twenty-eighth, Nineteen forty-five. Pardon me just a moment, Mr. Holden (further Examining Exhibit B). It likewise shows the premium rate per acre that we were to pay.

Mr. CASTERLIN. Just a moment. Have you offered that in evidence?

Mr. HOLDEN. Not yet.

Mr. CASTERLIN. Well, I think this runs to the contents of the Exhibit.

23 Mr. HOLDEN. I just wanted him to state briefly what it is; that's all I asked him.

Mr. CASTERLIN. Oh.

(Mr. Holden then handed Exhibit B to counsel for the defendant.)

Mr. CASTERLIN. May we have just a moment, if your Honor please?

The COURT. Yes.

(Discussion between counsel for the respective parties, outside the hearing of the court.)

Mr. HOLDEN. We will offer in evidence the plaintiffs' Exhibit B, and I will offer this other one, too [indicating document hereafter marked as "Exhibit B–One"].

Mr. CASTERLIN. With the understanding that the objection in reference to all acreage, excepting the sixty acres, may run to this Exhibit, we have no objection.

The COURT. It will be admitted.

(Plaintiffs' Exhibit B received in evidence by order of the Court.)

Mr. HOLDEN. I will ask you to mark—I will ask you to mark this "Plaintiffs' Exhibit B–One," for the purpose of identification, please.

(Plaintiffs' Exhibit B–One, insured's copy of "Contract Summary for 1945" marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to this instrument, marked plaintiffs' "Exhibit B–One," for identification, I will ask you to state briefly what that is.

A. (Examining Exhibit B–One.) This is a summary—this is a contract summary for Nineteen forty-five, dated July the
24 tenth, Nineteen forty-five.

Q. Did that supersede the instrument that I just introduced, plaintiffs' Exhibit B?

A. Yes. I might explain my answer on that, too, if I might.

Q. Just a moment. Calling your attention to Exihbit B–One, I will ask you if the lead pencil notations were on there at the time it was delivered to you by the defendant corporation [indicating]?

A. No; I put that on.

Q. Will you erase that, so that it will be in the same condition?

(The witness then erased something from the Exhibit B–One.)

(Mr. Holden then handed Exhibit B–One to counsel for defendant, who examined same.)

Mr. CASTERLIN. Mr. Holden, I notice that the line here for signature of the committee representative, apparently, as far as I can see, is blank, but, as a matter of fact, it was—the mark on there indicates that it was signed, and it was signed by J. E. Wheeler. That's the name which appears on there.

Mr. HOLDEN (examining Exhibit B–One). It's very faint there. If you could get it to the light. I couldn't identify it. That's the name?

Mr. CASTERLIN. Yes, J. E. Wheeler.

Mr. HOLDEN. Yes.

Mr. CASTERLIN. To which offer we object on the grounds stated in reference to Exhibit B.

The COURT. It will be admitted.

25 Mr. HOLDEN. May we offer this in evidence?

The COURT. I thought you had offered it.

Mr. HOLDEN. No.

Mr. CASTERLIN. We repeat our objection.

The COURT. Yes. It will be admitted.

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit——

The COURT. Have it marked.

Mr. HOLDEN. Pardon me.

(Plaintiffs' Exhibit B–One received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit B–One, I notice where it says "Signature of Committee Representative" that it's very dim there; do you know who signed that?

A. (Examining Exhibit B–One.) Yes; that was Mr. Wheeler—J. E. Wheeler.

Q What was his name?

Mr. CASTERLIN. J. E.

A. J. E. Wheeler.

By Mr. HOLDEN:

Q. J. E. Wheeler?

A. Yes; he was one of the members of the board.

Q. Now, Mr. Merrill, when you saw that you were going to sustain a loss, what did—if anything, did you do?

A. I wrote the board, and advised them of the fact that it looked as though we were going to sustain a loss, and asked them their pleasure in the matter.

Mr. HOLDEN. Have you the original letter that Mr. Merrill wrote to the county board, bearing date of August the

26 seventh, Nineteen forty-five?

Mr. CASTERLIN. I will have to look through here. What's the date of that letter?

Mr. HOLDEN. August seventh, Nineteen forty-five.

Mr. CASTERLIN (examining files). No; I don't have it.

Mr. HOLDEN. I will ask you to mark this letter for identification "Plaintiffs' Exhibit C."

(Plaintiffs' Exhibit C, carbon copy of letter, August 7, 1945, Plaintiffs to Chairman Bonneville County A. C. A. marked for identification by reporter.)

Mr. CASTERLIN. Is that August seventh, or seventeenth?

Mr. HOLDEN (showing Exhibit C to counsel for defendant). August the seventh.

By Mr. HOLDEN:

Q. Calling your attention to this letter marked "plaintiffs' Exhibit C" for the purpose of identification, I will ask you to state briefly what it is.

A. (Examining Exhibit C.) That's a letter, dated August the seventh, Nineteen forty-five, addressed to the Chairman of the Bonneville County ACA, at Idaho Falls, signed by Merrill Brothers, by myself.

Q. I notice that this copy doesn't bear your name. How was that signed?

A. The original was signed by myself; A. A. Merrill.

Mr. CASTERLIN. Mr. Holden, just write it in.

By Mr. HOLDEN:

Q. Then, if you will, just write that in, and we will submit it as ——

27 (The witness then signed his name on Exhibit C.)

By Mr. HOLDEN:

Q. I will ask you if you mailed that, the original of this letter to the Chairman of the Bonneville County board, or did you take it in there, or how did you deliver it?

A. I mailed it to them pursuant to the instructions given me on plaintiffs' Exhibit A-One. And they informed me that they would advise me when they wanted to go over the land for the purpose of ascertaining the damage that was done.

Mr. HOLDEN. We offer in evidence plaintiffs' Exhibit C.

Mr. CASTERLIN. To which we object on the ground that it does not tend to prove or disprove any of the issues in this case, and there is nothing to identify it with the acreage involved in this lawsuit; and that it includes, in any event, an acreage in excess of sixty acres which is pleaded in the amended complaint. There is no identification to connect it in any way with the wheat involved in this action.

The COURT. It will be admitted.

(Plaintiffs' Exhibit C received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. I will ask you if you talked to any member of the board, after having mailed plaintiffs' Exhibit C to them, regarding the loss that you had sustained?

A. Yes; I talked to three members of the board about it, after I wrote this letter.

Q. And what was done then?

A. I believe it was Mr. Sayer that told me——

28 Mr. CASTERLIN. Just a moment. We object to any condensation on the ground it is incompetent, irrevelant, and immaterial, and is an attempt to amend, orally, a written contract; and the proper foundation is not laid.

The COURT. Sustained.

By Mr. HOLDEN:

Q. I will ask you if after you mailed plaintiffs' Exhibit C a report of inspection was made by the defendant corporation——

A. Yes.

Q. Of the lands which you had suffered loss of crops on?

A. Yes; and the same land which I referred to when I wrote them this letter, which has just been introduced in evidence.

Mr. CASTERLIN. Now, we move to strike the latter part of the answer on the ground it is hearsay and incompetent.

Mr. HOLDEN. I can't see anything hearsay about that.

The COURT. Denied.

Mr. CASTERLIN. It is, in fact, a conclusion on the part of the witness.

The COURT. That objection is overruled, also.

Mr. HOLDEN. If you will, mark this instrument "Plaintiffs' Exhibit D" for the purpose of identification.

(Plaintiffs' Exhibit D, insured's copy of "Report of Inspection," marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit D, so marked for identification, I will ask you to state briefly what that is?

29 A. (Examining Exhibit D.) That is a report of the inspection that was made by Mr. Scoresby and Mr. Hix of the four hundred and sixty acres of Early Bart wheat which we suffered a loss on, of which this lawsuit is the subject matter, and it is dated September twenty-first, Nineteen forty-five, and signed by C. N. Scoresby.

Q. I believe you said Mr. Hix. You mean Mr. Mix, do you not?

A. Mr. Mix, I should have said.

Q. Now, I will ask you—calling your attention to this—to that lead pencil mark on there [indicating]; was that put on by you, or was that on when you received it?

A. Well, I don't recall that, but it adds up correctly to four hundred and sixty acres.

Q. The question is——

A. I rather think I put those on; those figures on.

Mr. HOLDEN. I will let you look at it. I think we will have that erased. Somebody totalled up this with a pencil.

(Mr. Holden then handed Exhibit D to counsel for defendant, who examined same.)

Mr. CASTERLIN. I will admit, Mr. Holden, that the lead pencil is a matter of common knowledge, or a mere matter of mathematics, and have no objection to it on the ground it is a pencil notation.

Mr. HOLDEN. All right.

By Mr. HOLDEN:

Q. Now, who is Mr. C. N. Scoresby, if you know; what official position does he occupy with the defendant corporation, or the county committee?

A. I believe that he——

30 Q. Well, what does it say under his name here [Indicating]?

A. I think that he is the official adjuster for the loss of wheat crops.

Q. Do you know what official position Mr. John P. Mix holds with the corporation?

A. I believe he is general state supervisor of the corporation.

Q. And plaintiffs' Exhibit D, marked so for the purpose of identification bears the name of Mr. C. N. Scoresby, the adjuster?

A. That is correct.

Mr. HOLDEN. We offer in evidence plaintiffs' Exhibit D, your Honor.

Mr. CASTERLIN. That's a copy of the Exhibit D attached to the complaint?

Mr. HOLDEN. Yes.

Mr. CASTERLIN. To which we object on the ground it is incompetent, and immaterial, and irrelevant, because it refers to acreage which is not included in the action, and it refers to acreage which is not included in the contract of insurance, and is contrary to the pleadings; and the sixty acres is not mentioned in it that is mentioned in paragraph seven of the amended complaint, that is, by identification.

The COURT. It will be admitted.

(Plaintiffs' Exhibit D received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. Now, Mr. Merrill, did the plaintiff thereafter submit proof—a statement in proof of the loss that the plaintiff

31 partnership had sustained by reason of the drought?

A. Yes.

Mr. HOLDEN. I will ask you to mark this instrument "Plaintiffs' Exhibit E."

(Plaintiffs' Exhibit E, applicant's copy of "Statement in Proof of Loss" marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to this instrument, marked for identification "Plaintiffs' Exhibit E," I will ask you to state briefly what it is?

A. (Examining Exhibit E.) That is the Statement in Proof of Loss of the portion of the four hundred and sixty acres of Early Bart wheat that the plaintiffs sustained. It is dated September twenty-first, Nineteen forty-five, and signed by Merrill Brothers, by A. A. Merrill, and by C. N. Scoresby, adjuster for the corporation.

(Mr. Holden then handed Exhibit E to counsel for defendant.)

(Discussion between counsel for the respective parties, outside the hearing of the court.)

By Mr. HOLDEN:

Q. I will ask you where plaintiffs' Exhibit E was prepared?

A. It was prepared in the office of the——

Q. The Agricultural Conservation Committee's office?

A. That's right, in Bonneville County.

Q. And on the twenty-first day of September, Nineteen forty-five?

A. That's right. It was prepared by some of the mem-
32 bers of the office force; I don't recall who did the typing.

Q. And from what information was it prepared?

A. It was prepared from information that was received at the time the adjuster went out and looked over the wheat crop.

Mr. HOLDEN. We offer in evidence the plaintiffs' Exhibit E.

Mr. CASTERLIN. To which we object on the ground that it is not the best evidence; it is self-serving, and insofar as the record stands at this time it is entirely hearsay, and is in violation of the regulations and the insurance contract.

The COURT. It will be admitted.

(Plaintiffs' Exhibit E received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. Now, Mr. Merrill, were you ever invited by the corporation to accompany any of their agents out to your lands upon which you had this crop, and had made application for the insurance on?

A. Yes.

Q. I will ask you to relate what was done in that regard, if you will.

A. Let me see the other Exhibit.

Q. This one [indicating Exhibit D]?

A. Yes.

(Mr. Holden then handed Exhibit D to the witness.)

A. (Examining Exhibit D.) After I had written the board and informed them that it looked as though we were going to suffer a loss, and asked them to have their inspector go out over the
33 farm, the board very graciously, a few days later, called me over the phone and told me that Mr. Mix, the state agent, was in, and asked me if I would accompany him and Mr. Scoresby to our dry farm and go over the crop for the purpose of ascertaining the amount of the loss; which I did, of course.

By Mr. HOLDEN:

Q. All right. What happened then?

A. Mr. Scoresby and Mr. Mix and myself went out to the dry farm, and went over it, at least to the satisfaction of Mr. Scoresby and Mr. Mix——

Mr. CASTERLIN. We move to strike the last, "to the satisfaction of Mr. Scoresby and Mr. Mix," on the ground it's a conclusion—it's hearsay and a conclusion on the part of the witness.

The COURT. The motion is granted.

A. We went out to the dry farm, and looked over the loss; Mr. Mix and I walked out into the wheat, and Mr. Scoresby walked out into a thousand acres of summer fallow that we had adjacent to the wheat, and Mr. Mix said, "Well, now——

Mr. CASTERLIN. Just a moment. We object to any conversation on the ground that oral conversation cannot alter or change the terms of the written contract; and the proper foundation has not been laid under the terms of the contract, or the law.

Mr. HOLDEN. I thought it was agreed that these objections would run to this line of testimony, and just save the record—save incumbering the record with it with every question I ask.

Mr. CASTERLIN. Well, counsel, that main objection merely went to evidence as to acreage other than the sixty acres. I couldn't anticipate what was coming up by way of
34 conversations.

The COURT. I don't believe you have laid any foundation for a conversation.

By Mr. HOLDEN:

Q. Who did you have this conversation with?

A. I had the conversation with Mr. Mix.

Q. And where did it take place?

A. It took place out on the dry farm, out in the wheat field.

Q. And on what date, approximately?

A. Well, approximately [examining Exhibit D]—a few days before September twenty-first, Nineteen forty-five.

Q. And it was on the same land that——

A. On this four hundred and sixty acres; yes.

Q. And did the conversation relate to the crop?

A. Yes; the conversation related to the crop, and to the loss that we had sustained, and Mr. Mix gave me instructions what to do.

Q. All right. Now relate that conversation.

Mr. CASTERLIN. To which we object on the ground that the proper foundation has not been laid by reason of Section four-one-four point four-two of the regulations in question.

The COURT. He may answer.

A. Well, Mr. Mix was very splendid about it. He said, "There's no question, Mr. Merrill, but what you suffered a rather drastic loss here." And he said, "That's what this insurance program is for, to take care of just this sort of thing. Now," he said, "you cut all that you can conveniently cut, without wasting money." And he pointed out some of the lower places, and he said, "For example, this you would probably cut; and up on the higher places you can't cut. So," he says, "cut all you can, and keep track of the number of bushels that you cut." And I told him we were going to sell our crop to the Midland Elevator, and we could produce the exact number of bushels we harvested. He said, "That will be splendid. You do that, and then when you get through bring in your wheat statement to the county office, and we will come in then and prepare the proof of loss." I told him that I would be glad to do that. I told him that our loss hadn't only been the loss of wheat that year, but that we had planted it the fall before and it had winter killed, and so we had, of course, a double loss, so far as seed was concerned. And he turned around, and he pointed to the thousand acres of summer fallow which we had, that the moisture was right to the top of the ground, and it really looked very nice, and he said, "By the looks of this, you won't have a loss next year." And in that connection I want to say that both Mr. Mix and Mr. Scoresby were perfect gentlemen in that whole matter.

Mr. CASTERLIN. Just a moment—Well, all right.

By Mr. HOLDEN:

Q. Now, did you cut any of the grain——

A. Yes; we cut——

Q. Pursuant to the instructions of Mr. John P. Mix?

A. Yes; the grain was all cut, that is, pursuant to Mr. Mix' instructions, we harvested it over the entire four hundred and

sixty acres, and harvested about twelve hundred and fifty-four bushels from four hundred and sixty acres. I don't think there was any forty, or even twenty acres that we didn't cut some
36 grain on. We cut everything that we could possibly cut, that was worth cutting, at all.

Q. Now, what did you do with the grain that you harvested on the lands in question, or mentioned in your complaint?

A. Most of it was hauled in to the Midland Elevator, all but about a hundred and fifty bushels, which we stored for seed.

Mr. HOLDEN. If you will, mark this "Plaintiffs' Exhibit F" for identification.

(Plaintiffs' Exhibit F, copy of "Grain Settlement," Midland Elevator to Merrill Bros., marked for identification by reporter.)

(Mr. Holden then handed Exhibit F to counsel for defendant.)

(Discussion between counsel for the respective parties, outside the hearing of the court.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit F, marked so for the purpose of identification, Mr. Merrill, I will ask you to state just briefly, if you will, what that Exhibit is.

A. (Examining Exhibit F.) This is a copy of the grain settlement sheet for the grain that we sold to the Midland Elevator, between August the twenty-seventh, Nineteen forty-five, and September the thirteenth, Nineteen forty-five, from the lands described in the complaint as the four hundred and sixty acres.

Q. I will ask you who prepared this instrument, marked "plaintiffs' Exhibit F?"

A. That was prepared by the Midland Elevator's office force, in——

Q. Completely?

37 A. In Idaho Falls, Idaho.

Q. Completely?

A. Yes. This is my carbon copy of the amount of wheat we sold them.

Q. And does that correctly represent the amount of wheat that you sold to the elevator, which came off of the lands in question?

A Yes; it shows the amount of——

Mr. CASTERLIN. To which we object on the ground it is hearsay, and the foundation has not been laid yet for him to testify to that.

Mr. HOLDEN. Well, we can and will bring in, as far as that goes, the Midland Elevator people who prepared this sheet.

By Mr. HOLDEN:

Q. They gave you this sheet, and prepared every item there is on there?

A. That's right. And that shows the price paid, and the test of the wheat, and the number of pounds of wheat we sold them.

Mr. HOLDEN. We offer in evidence Exhibit F.

Mr. CASTERLIN. May I ask Mr. Merrill a question or two, your Honor?

The COURT. Yes.

By Mr. CASTERLIN:

Q. Mr. Merrill, were you present when this wheat was delivered?

A. No; I was not, Mr. Casterlin. Naturally, our men just hauled the wheat in as it was harvested. Of course, I don't take an
38 active part in the farming, you understand, I am in my office.

Q. So, all the information you have concerning this Exhibit F is that which you have obtained from some other person?

A. Yes; I just went down to the Midland Elevator, and asked them for our close-out balance sheet, and they gave me this sheet and my check.

Mr. CASTERLIN. Well, I think we will have to object to the Exhibit on the ground it is not properly identified.

A. For your information, counsel, I might state I omitted telling Mr. Holden that Mr. Smith will be here this afternoon with the original records. I told him we wouldn't need him before one-thirty. He will be here then with the original records.

Mr. HOLDEN. All right.

The COURT. Are you withdrawing the offer at this time?

Mr. HOLDEN. Well, I think I will just let the offer stand. We will offer it now, and if it don't go in we will reoffer it with Mr. Smith.

The COURT. Yes. Well, I think there should be some further identification.

Mr. HOLDEN. All right, then, we will just withdraw the offer at this time.

Mr. CASTERLIN. At this state of the record we move to strike the testimony of the witness with respect to this Exhibit F and the contents thereof.

The COURT. Well, so far as he purported to state the contents, it may be stricken.

39 A. I might state this, that I was present——

Mr. CASTERLIN. There is nothing before the court now, Mr. Merrill.

A. Then, may it please the court, I would like to make one statement with respect to my last statement, to explain my last question [sic], with respect to the identification of this Exhibit.

The COURT. Well, it has been withdrawn.

A. Oh. Very well.

Mr. HOLDEN. I will ask you to mark this letter "Plaintiffs' Exhibit G" for identification.

(Plaintiffs' Exhibit G, a Letter, defendant to plaintiffs, dated August 17, 1945, marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit G, marked so for the purpose of identification, I will ask you to state briefly just what that Exhibit is, if you will, please, Mr. Merrill?

A. (Examining Exhibit G.) This is a letter written by the Federal Crop Insurance Corporation, Denver Colorado, dated August the seventeenth, Nineteen forty-four [sic], addressed to Merrill Brothers, in care of myself, at Idaho Falls, Idaho, and the subject matter of the letter pertains to the Nineteen forty-five wheat crop insurance contract of the plaintiffs.

(Mr. Holden then handed Exhibit G to counsel for the defendant.)

(Discussion between counsel for the respective parties outside the hearing of the court.)

40 The COURT. We will recess at this time, gentlemen. Was there something you wanted, Mr. Casterlin?

Mr. CASTERLIN. May I reserve my objection to the Exhibit until after lunch, because we have a whole series of correspondence here, and we might agree to put it all in at once.

Mr. HOLDEN. I haven't offered it yet.

The COURT. Very well. You can consider that during the lunch hour. That will be all, Mr. Merrill until after the lunch hour.

Gentlemen of the jury, the court instructs you at this time that at all times during the course of this trial, both in and out of court, it is your duty not to talk about this case, either among yourselves, or with anyone else, nor to permit anyone to talk either to you or within your hearing on any subject connected with this trial, nor to form or express any opinion on the merits of the case until after it is finally submitted to you.

That will be all now until one-thirty this afternoon.

(The court then adjourned for the noon recess. At one-thirty o'clock, P. M., court reconvened, and the following proceedings were had in the presence of the jury:)

The COURT. Call the roll of the jury.

(The Clerk then called the roll of the jury, and all jurors answered present.)

The COURT. All right, Mr. Holden, you may resume the examination.

Mr. HOLDEN. If the court please, we have a witness, Mr. Smith, here who is the manager of the Midland Elevator
41 Company, if we could withdraw this witness, Mr. Merrill. But, I would have to put on a very short witness before he goes on, to lay the foundation for his testimony. Is there any objection to that, Mr. Casterlin?

Mr. CASTERLIN. No; no objection to that.

Mr. HOLDEN. May we do that, then, your Honor?

The COURT. Very well.

Mr. HOLDEN. Very well, then, just step down, if you will, Mr. Merrill. We will call Adrian A. Merrill, Junior.

ADRIAN A. MERRILL, Jr., called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. HOLDEN:

Q. You may state your name.

A. Adrian A. Merrill, Junior.

Q. You are the son of Adrian Merrill—A. A. Merrill, one of the plaintiffs in this action?

A. Yes, sir.

Q. How old are you?

A. Fifteen.

Q. Fifteen?

A. Yes.

Q. I will ask you if you had occasion to haul any wheat from the lands of the plaintiffs, Merrill Brothers, located west of Idaho Falls, along in September—August the twenty-seventh. What is that date [discussion between counsel for plaintiffs] and September thirtieth, Nineteen forty-five, during those dates, or between those dates?

42 A. Yes.

Q. Where did you haul it to?

A. The Midland Elevator.

Q. Do you recall how many loads of wheat you hauled to the Midland Elevator?

A. Eight.

Q. And was that the wheat that was grown on the plaintiffs' lands?

Mr. CASTERLIN. Just a moment. We object to that on the ground the foundation has not been laid. It might be hearsay.

By Mr. HOLDEN:

Q. Do you know where the wheat was grown that you hauled from the plaintiffs' ranches to the Midland Eleveator?

A. Yes.

Q. Where was it grown?

A. On the dry farm land west of Idaho Falls.

Q. And you hauled eight loads, you say?

A. Yes.

Q. Did anyone else haul any of the grain that was harvested on those lands to the elevator, besides you?

A. No.

Q. What did you haul the grain in?

A. An International D-Thirty, Nineteen forty, ton-and-a-half truck.

Mr. HOLDEN. That's all.

Cross-examination by Mr. CASTERLIN:

Q. Mr. Merrill, where do you live with respect to this land that you have mentioned?

43 A. Pardon?

Q. Where do you live with respect to this land you have mentioned; do you live on the land, or do you live here in town?

A. We live in town.

Q. You live in town?

A. Yes.

Q. Were you present when the grain was—on these lands you have mentioned was threshed?

A. Yes.

Q. And just what were your duties during the threshing season?

A. I handled the trucks, and waited and when the combine came around the field it had a load of grain in the bin, and it dumped that into the truck, and when the truck was full I brought it into the Midland Elevator, and dumped it into their elevators, and went back after more.

Q. How many acres of land were threshed at that time?

Mr. HOLDEN. We object to the question for the reason it is not proper cross-examination. We didn't go into that, your Honor.

The COURT. He may answer.

A. I don't know, for sure, how many were done.

By Mr. CASTERLIN:

Q. Do you know how many acres of land was put into wheat by your father and your uncle last year, in Nineteen forty-four and Forty-five?

Mr. HOLDEN. The same objection to that question.

The COURT. He may answer.

A. No, I don't.

44 By Mr. CASTERLIN:

Q. Do you know how many acres of land your father farmed during that period, as far as wheat is concerned?

Mr. HOLDEN. May it be understood that our objection runs to this line of examination, your Honor?

The COURT. Yes. He may answer.

A. I don't know for sure how many acres of grain was planted.

By Mr. CASTERLIN:

Q. Your father owned and operated during that time more than one farm?

A. Yes, sir.

Mr. CASTERLIN. That's all. Thank you.

Mr. HOLDEN. That's all.

Mr. A. A. MERRILL. Just a moment.

(Discussion between counsel for plaintiffs.)

Mr. HOLDEN. Just one other question.

Redirect examination by Mr. HOLDEN:

Q. Did the plaintiffs operate more than one dry farm in Nineteen forty-five?

A. In wheat land?

Q. Yes.

A. No.

Mr. HOLDEN. That's all.

Mr. CASTERLIN. That's all.

Mr. HOLDEN. We will call Mr. Smith.

45 M. W. SMITH, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. HOLDEN:

Q. You may state your name.

A. M. W. Smith.

Q. Your residence?

A. Idaho Falls.

Q. And occupation?

A. Manager of the Midland Elevators.

Q. How long have you been such manager, approximately, Mr. Smith?

A. Twenty years.

Q. And now are?

A. Now am; yes.

Q. I will ask you if you purchased any grain from the plaintiffs, Merrill Brothers, along the latter part of August and the first part of September of last year, Nineteen forty-five?

A. We did.

Q. And what kind of grain was it, Mr. Smith?

A. Bart—Bart wheat.

Q. Is that spring wheat?

A. It's a spring wheat; yes, sir.

Q. And do you recall seeing the young lad who was on the witness stand a little while ago?

A. No; I didn't weigh the grain, so I didn't see him, Mr. Holden.

Q. I will ask you how much grain you purchased from Merrill Brothers between August the twenty-seventh, and
46 September the thirteenth, Nineteen forty-four [sic]?

Mr. CASTERLIN. August twenty-seventh and September thirteenth?

Mr. HOLDEN. Yes.

A. (Examining document.) The gross amount was sixty-seven thousand and ten pounds. In bushels that would be one-one-one-seven—eleven hundred and seventeen bushels.

By Mr. HOLDEN:

Q. Now, did you furnish the plaintiffs with a duplicate work sheet—work sheet of the grain that you purchased from them?

A. Yes.

Q. During those dates?

A. Yes. He should have a carbon copy of this sheet [indicating document].

Mr. HOLDEN. We will ask counsel for the defendant to produce the carbon copy.

Mr. CASTERLIN. Well, your demand is coming too late now.

Mr. HOLDEN. I understand that a demand was made some two weeks ago for that.

Mr. CASTERLIN. Demand was not made some two weeks ago.

Mr. A. A. MERRILL. It's in the file there.

Mr. HOLDEN. Could I see the original files, your Honor?

Mr. CASTERLIN. I will admit, Mr. Holden, demand was made March eleventh, Nineteen forty-five [sic], and that was received by us on March twelfth, Nineteen forty-six—Nineteen forty-six, I should say—which demand was received by us on March twelfth, Nineteen forty-six.

47 (Mr. Holden then examined the original files in this cause, produced a document therefrom, which was hereafter marked "Plaintiffs' Exhibit H." and handed it to Mr. Casterlin.)

Mr. HOLDEN. I refer you to the demand for the particular items which were requested. Is this the document that you received?

Mr. CASTERLIN (examining Exhibit H.) Yes.

Mr. HOLDEN. I will ask you if that doesn't cover "any and all other papers pertaining to the insurance crop relative to the above entitled matter"?

Mr. CASTERLIN. Too indefinite to be complied with. Further, the original files are all in Washington, D. C., and it's a physical impossibility to get them. All of the items which you have particularly mentioned there as desiring are here in the courtroom.

Mr. HOLDEN. I will ask you to mark this instrument for identification "Plaintiffs' Exhibit H."

(Plaintiffs' Exhibit H, "Notice to Produce Writings in Court," from the files in this cause, marked for identification by reporter.)

Mr. HOLDEN. We offer in evidence plaintiffs' Exhibit H.

Mr. CASTERLIN. No objection.

The COURT. It may be admitted.

(Plaintiffs' Exhibit H received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. Now, Mr. Smith, did you state the number of bushels that you purchased from Merrill Brothers during those dates?

A. Yes.

48 Q. I will call your attention to this instrument, marked for identification "Plaintiffs' Exhibit F," and ask you if that is a correct statement of the pounds and number of bushels of wheat that you purchased from the Merrill Brothers during the dates mentioned there?

A. (Examining Exhibit F.) Yes; the net figures are the same.

Q. Now, what was the market value, or price of Early Bart wheat, such as you purchased from Merrill Brothers, and shown in this Exhibit F?

A. A dollar twenty-nine a bushel.

Mr. CASTERLIN. What date was that, counsel?

Mr. HOLDEN. Pardon me?

Mr. CASTERLIN. On what date was that price?

Mr. HOLDEN. That would be August twenty-seventh, twenty-eighth, and thirtieth, and September first, tenth, and thirteenth.

Mr. CASTERLIN. All right.

By Mr. HOLDEN:

Q. What was the market price of that grain?

A. Dollar twenty-nine a bushel.

Q. And is that the price that you paid to Merril Brothers for that wheat?

A. That's the price.

Q. I will ask you what the protein test of that wheat was.

A. Thirteen, eighty-five.

Q. Does that have anything to do, or did it have anything to do at the time you purchased this wheat, the protein test?

49 A. We paid two cent extra on account of it being over twelve. Had it been under twelve, it would have been a dollar twenty-seven.

Mr. HOLDEN. We offer in evidence plaintiffs' Exhibit F, your Honor.

(Discussion between counsel for the respective parties, outside the hearing of the Court.)

By Mr. HOLDEN:

Q. Mr. Smith, where did the information come from that is shown on plaintiffs' Exhibit F?

A. It was copied off of this [indicating a document]. That's the only place it could have come from.

Mr. CASTERLIN. What do you mean by "this?"

A. This is the original settlement sheet [indicating document], of which there should be a copy some place. One was given to the customer.

Mr. CASTERLIN. I see.

Mr. HOLDEN. I think the testimony shows that Mr. Merrill delivered the duplicate copy to the company [sic], and that is supposed to be in Washington, D. C., and cannot be produced.

Mr. CASTERLIN (examining Exhibit F). Counsel, this is not a copy of the original.

Mr. HOLDEN. The witness stated that this——

A. The net figures are the same as on the original, I said.

Mr. HOLDEN. The net figures are identical.

Mr. CASTERLIN. May I ask the witness a question, your Honor?

50 The COURT. Very well.

By Mr. CASTERLIN:

Q. Mr. Witness, calling your attention to what you designate as the original grain settlement sheet, and directing your attention to that which is marked as plaintiffs' "Exhibit F," there seems to be some discrepancy in here. Now, your original, for instance, on line four contains a red line there [indicating]. What is the significance of that?

A. They hauled wheat so many days, and to know the amount of wheat we took in that day we add it up each day. The next day they haul more, and we add that up. The red line is to distinguish that.

Q. That explanation would also apply to the column under "Deductions"?

A. Yes; the red line come right across. That's an entry for our own books. If they hauled it all in one day there would be only one red line.

Q. I notice here, under "Weights before Deductions," under "Net," there is a base figure of six-seven-0-one-0 [indicating].

A. Six-seven-0-one-0.

Q. Now, below that, or on the right, is——

A. Seven, fifty.

Q. What does that mean?

A. That means the dockage. Three loads had no dockage; the fourth one had dockage, and as the time went on it developed more dockage; probably from weeds.

Q. Then, under your "Weights Before Deductions," under that column [sic] the last figure, six-six-two-six-0, is that the difference between these two items [indicating]?

51 A. That's the difference, and that's the amount we paid for.

Q. Now, I notice over here under "Paid for Net Weight" you have there fourteen, twenty-four, point fifty-nine [indicating]; that doesn't occur in this copy [indicating Exhibit F] in the same column.

A. Well, it's the same thing. There is the amount of the money. We made this copy up for someone [indicating Exhibit F]; we didn't know what it would be used for, but we gave the information they desired. That's the net amount of money they received.

Q. The Exhibit F, where did you get the information that went into that?

A. I don't know anything about Exhibit F.

Q. That's this copy [indicating Exhibit F].

A. It came off from this [indicating document produced by witness]. We didn't have to make it up exactly alike; we were after the net results.

Q. When you say it was made up from this, you have reference to the original of this Exhibit F?

Mr. Holden. No; he has the original in his hand.

A. I have the original.

By Mr. Casterlin:

Q. That's what I say. Now, the original—the information that is on the original grain settlement sheet, where did that come from?

A. Off the tickets. That is, this one [indicating].

Q. And where are the tickets?

A. The tickets are in our office; our tickets. I don't know where the plaintiffs' tickets are.

52 Q. Did you transcribe the information from the tickets onto this grain settlement sheet yourself?

A. I didn't do it myself. The employee done it.

Q. You don't know then, whether it's accurate, or not?

A. Well, I am pretty well convinced.

Q. Well, do you know, of your own knowledge? You didn't copy it off.

A. No; but I have a system, and I know it checks out.

Q. Did you make a comparison between the original weight slips and this?

A. No, not I. It was done by another employee.

Q. Done by another employee?

A. Yes.

Q. Do you know where the grain came from that is described in there?

A. No, sir; no, sir.

Q. You don't know that?

A. No, sir; no, sir.

Mr. CASTERLIN. I think I will object to the Exhibit on the ground it is incompetent, irrelevant, and immaterial, and doesn't pertain to any of the issues in this case. The Exhibit is not properly identified.

Mr. HOLDEN. I think the Exhibit is proper. They have in their possession the duplicate of the instrument that the witness has in his hand, and they failed to produce it after demand; and this shows to be a true and correct copy [indicating Exhibit F].

The COURT. It will be admitted.

(Plaintiffs' Exhibit F received in evidence by order of the Court.)

53 Mr. HOLDEN. That's all.

The COURT. Just a moment. There may be some cross-examination.

Mr. CASTERLIN. That's all.

The COURT. You will be excused, then, Mr. Smith. Call your next witness.

Mr. HOLDEN. We will recall Mr. Merrill, if your Honor please.

A. A. MERRILL, recalled as a witness on behalf of the plaintiffs, testified as follows:

Direct examination by Mr. HOLDEN:

Q. Calling your attention to this letter marked for identification "Plaintiffs' Exhibit G," I will ask you to state just briefly what it is.

A. (Examining Exhibit G.) This is a letter dated August the seventeenth, Nineteen hundred and forty-five, written by the Federal Crop Insurance Corporation, of the Denver Branch, to Merrill Brothers, in care of myself.

Q. Who is it signed by?

A. It is signed by C. B. Holmes, Branch Manager of the Denver Office.

(Mr. Holden then handed Exhibit G to counsel for the defendant.)

Mr. CASTERLIN. Subject to our general objection, we have no objection to its admission.

Mr. HOLDEN. We offer it in evidence.

The COURT. It will be admitted.

(Plaintiffs' Exhibit G received in evidence by order of the Court.)

54 By Mr. HOLDEN:

Q. Mr. Merrill, there is some discrepency as to the number of acres in conection with these Exhibits, some of them showing, I think, four hundred and twenty acres, and the others four hundred and sixty. Will you take these Exhibits, and locate the proper ones, and explain that discrepancy?

A. (Examining Exhibits.) Exhibit B–One shows four hundred and twenty acres. That's the Contract Summary for Nineteen forty-five. When I received this copy I called and advised them——

Q. Now, which copy?

A. B–One; Exhibit B–One.

Q. All right. Identify it each time.

A. Yes. I called the office and advised them of the fact that they had omitted forty acres, that they had it four hundred and twenty acres, and it should have been four hundred and sixty. After that there was an affidavit that was filed showing that error——.

Mr. CASTERLIN. Just a moment——

By Mr. HOLDEN:

Q. Wait a minute. Who filed the affidavit? Pardon me.

A. I filed the affidavit, at the request of the defendant corporation.

Mr. HOLDEN. Have you that affidavit?

Mr. CASTERLIN. I think I have it here [producing photostatic copies of documents and handing them to Mr. Holden]. Is that the one you have reference to?

Mr. HOLDEN. (examining documents). Yes. I wonder if I should separate that affidavit?

55 Mr. CASTERLIN. Is that the one you have reference to, Mr. Holden?

Mr. HOLDEN. Yes; that's the one.

(Mr. Holden then separated the two photostatic copies just produced by Mr. Casterlin.)

Mr. HOLDEN. I will ask you to mark this "Plaintiffs' Exhibit J" for the purpose of identification.

(Plaintiff's Exhibit J, photostatic copy of Affidavit, of A. A. Merrill, marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to this photostatic copy of an affidavit, marked for identification "Plaintiffs' Exhibit J," I will ask you to state what it is, briefly.

A. (Examining Exhibit J.) This is the affidavit that I signed and filed with the defendant corporation on or about the twenty-ninth of September, Nineteen hundred and forty-five.

(Discussion between counsel for the respective parties outside the hearing of the court.)

By Mr. HOLDEN:

Q. Now, Mr. Merrill, did you prepare such an affidavit in order to correct the discrepency in the number of acres?

A. Yes.

Q. And is this a photostatic copy of the original which you delivered to the defendant corporation [indicating Exhibit J]?

A. That's right.

Mr. HOLDEN. We offer in evidence plaintiffs' Exhibit J for the—only for the purpose of showing that there was forty acres omitted from the number of acres which shows on plaintiffs' Exhibit
56 B. We offer in evidence plaintiffs' Exhibit J for that purpose.

Mr. CASTERLIN. We will have to object to it, when offered with the conditions that counsel connects with it. If you want to offer it generally, we have no objection on the ground that it is a copy, but merely the general objection that it is immaterial for any purpose. But, limiting it, as you have stated, we will object to it for that purpose.

Mr. HOLDEN. Well, that's the purpose for which we offer it.

The COURT. It will be admitted.

(Plaintiffs' Exhibit J received in evidence by order of the Court.)

Mr. CASTERLIN. It is understood we make no objection on the ground it is a photostatic copy?

The COURT. Yes.

Mr. CASTERLIN. Yes.

By Mr. HOLDEN:

Q. Now, calling your attention to the plaintiffs' Exhibit D, the Report of Inspection, I will ask you if that correction was made, and the report shows, in plaintiffs' Exhibit D, the four hundred and sixty acres?

A. (Examining Exhibit D.) Yes. After that affidavit was filed, all other papers from then on showed the four hundred and sixty acres, that the defendant corporation filed with us.

Q. And the four hundred and sixty acres are the number of acres that you claim you sowed on the lands and premises described in your complaint as the southeast quarter of section thirty-two, and

57 the east half of the southwest quarter of section thirty-two, and the north half of the southwest quarter of the southwest quarter of section thirty-two, and the southwest quarter of the northwest quarter of section thirty-two, and one hundred acres of land in the northeast quarter of section thirty-one, and the south half of the south half of the southeast quarter of section twenty-nine, and the south half of the southeast quarter of the southwest quarter of section twenty-nine, all in township three North, Range thirty-six, East of the Boise Meridian, in Bonneville County, Idaho, and containing four hundred and sixty acres of land?

A. That's correct. And it is also the four hundred and sixty acres that I pointed out to the board on March the twenty-sixth, Nineteen forty-five, on my map, when I signed the application for the insurance.

Q. Do you have that map here?

A. Yes; you have it there, I think, Mr. Holden, in the file.

Mr. HOLDEN (producing document). If you will, mark this for identification "Plaintiffs' Exhibit K," please, Mr. Reporter.

(Plaintiffs' Exhibit K, a township plat, with subdivisions marked, and notations, marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit K, marked so for the purpose of identification, will you just state briefly what it is?

A. (Examining Exhibit K.) That's a map showing our operations and the land described in the complaint, among other lands, that I presented to the——

58 Q. Well, just—That will be sufficient on this, Mr. Merrill.

A. Yes; that's what it is.

Q. Now, did you exhibit this map to the Agricultural Conservation Committee on the day that you signed the plaintiff's Exhibit A?

A. Yes; that is the map I exhibited to them, and pointed out to them the four hundred and sixty acres that we had seeded and were seeding to Bart spring wheat.

(Mr. Holden then handed Exhibit K to counsel for defendant.)

(Discussion between counsel for the respective parties, outside the hearing of the court.)

Mr. CASTERLIN. Subject to the general objection——

Mr. HOLDEN. Let me make my offer. We offer plaintiffs' Exhibit K in evidence.

Mr. CASTERLIN. Subject to the general objection which we have made as to acreage, we have no further objection to the Exhibit.

The COURT. It may be admitted.

(Plaintiffs' Exhibit K received in evidence by order of the Court.)

Mr. HOLDEN. If the court please, if there would be no objection from counsel, we would like to substitute a true copy of that letter, so that he may have this with him. We will want to use it, probably, in examining other witnesses, but we would like to withdraw it and substitute a copy. We will assure you that it will be a true copy, if we do that. Would there be any objection?

Mr. CASTERLIN. No; I think there will be no objection, Mr. Holden.

59 A. And for the further reason, may it please the court, that this last Exhibit has certain information on that I would like to keep; has information on and names of people from whom we have acquired the different farms. For that reason, I would like to keep this copy—this map in my files, if we might have that understanding.

The COURT. All right.

Mr. CASTERLIN. Just a moment, counsel.

(Mr. Casterlin then examined Exhibit K.)

By Mr. HOLDEN:

Q. Now, I don't recall whether I asked you that, or not, but how many bushels of wheat did you actually harvest on this land in Nineteen forty-five?

A. Twelve hundred and fifty-four, I believe.

Q. And if that's the amount mentioned in the complaint, would that be correct?

A. Yes; that's it, twelve hundred and fifty-four bushels, Mr. Holden.

Q. Now, what happened to the other hundred and fifty bushels, the difference between the amount you sold to the Midland Elevator and the amount of twelve hundred and fifty-four bushels that you harvested from that land in Nineteen forty-five?

A. There was a hundred and fifty-four [sic] bushels, whichever it is, and that was taken over to the—to my ranch for—that we kept for seed.

Q. I am not sure whether I asked you this question, or not, regarding plaintiffs' Exhibit E, that is the statement in proof of loss. Did I ask you where this Exhibit was prepared? I am not sure about that.

60 A. I don't recall whether you did, or not, but I can answer it.

Q. I will ask you now, where was it prepared?

A. It was prepared in the office of the AAA, in the courthouse here.

Q. And was that prepared after you and Mr. Mix and Mr. Scoresby went out to make the inspection of the premises?

A. Yes; we all met down in the office, and that was prepared there at that time. That is, I might qualify that by saying that the substance of it was all talked over. I don't know that it was actually typed right at that time, but we were all there when the—I think it was Mr. Mix that dictated the substance of it, or Mr. Scoresby, I don't remember which one of them. But, it was prepared there in the office.

Q. Now, how did you compute—what did you compute your loss from in wheat acreage on the lands in question for Nineteen forty-five?

A. (Examining Exhibit E.) Under the terms of Exhibit E there was four hundred and sixty measured acres; the board had previously set a yield for that territory and for our farm of eighteen point eight bushels per acre; the insured percentage was fifty percent of the crop, and the insured interest was one hundred percent. So, we took eighteen point eight bushels per acre, times four hundred and sixty acres, which made eighty-six hundred and forty-eight bushels; we divided that by two, because we were only insured for fifty percent of the crop, and that made forty-three hundred—four thousand, three hundred and twenty-four bushels; and we deducted from that the twelve hundred and fifty-four

61 bushels that we sold, and that left the net bushels of three thousand and seventy which we should be paid for.

Q. Well, that left the bushels that the—the number of bushels after deducting what you had sold and the hundred and fifty bushels which you retained, did it not?

A. That's right. And after also deducting the fifty percent of the entire gross crop.

Q. Now, the amount that you deducted, then, was twelve hundred and fifty-four bushels, which included the hundred and fifty bushels that you retained, and the number of bushels that you sold to the Midland Elevator?

A. That's right. Then, after that—after we found out what the net number of bushels were that we were to be compensated for under the insurance contract, we timesed that by a dollar and twenty-nine cents per bushel, which was the market price of the wheat at the time we sold it, and that gave us a net of three

thousand, nine hundred and fifty-nine dollars and eighty-seven cents, in which amount we——

Mr. CASTERLIN. What is that amount, again?

A. Thirty-nine hundred and fifty-nine dollars and eighty-seven cents, which is the amount we claim in our complaint as a loss.

By Mr. HOLDEN:

Q. I think you claim in the complaint thirty-nine hundred and thirty dollars, and—thirty-nine hundred and sixty dollars, and thirty cents, do you not?

A. Yes; I am in error. That is correct.

Q. That is the amount that you claim the defendant owes you under the terms of your insurance contract—thirty-nine hundred and sixty dollars, and thirty cents?

62 A. That's right. In explanation of that I might state this: That we had no way of—or the farmer has no way of ascertaining——

Mr. CASTERLIN. Just a moment. We object to his analysing and discussing what farmers generally know, or what they don't know, or how they arrive at it.

By Mr. HOLDEN:

Q. Yes; confine that to your own experience.

A. Very well. In explanation of that, I might state that it was the corporation that set up the basic yield, which was only eighteen point eight. The basic yield, or the average yield of that country may have been twenty-five or thirty bushels, or it may have been better than that; but that was the basic bushels per acre that the corporation set up for the purpose of this insurance.

Q. And you had nothing to do with fixing that basic yield?

A. None, whatever. That was the yield that they set up out there, was eighteen point eight.

Q. And this company, then, under the terms of the contract, would have insured you for nine and four-tenths bushels per acre?

A. That's right. And the yield—or, the payment was based upon six-tenths of a bushel per acre, that's what we had to pay was six-tenths of a bushel per acre. Or, if you want to multiply it out in dollars and cents, it would be six-tenths, in our case, of a dollar and twenty-nine cents a bushel, and upon that hypothesis they arrived at the amount of acres—the amount of bushels that we were to grow per acre that we were insured for, and the amount that we were to pay for the insurance and that's what we paid.

63 Q. Now, I will ask you if the defendant ever notified you of the premium due?

A. Yes. Yes; we got a notice.

Q. How was that done?

A. Well, we got a notification, which is plaintiffs' Exhibit B.

Q. And what is the date of that?

A. The date of that was June the twenty-eight, Nineteen twenty-five [sic].

Q. All right. Did you get any further notice from the defendant regarding the amount that was due under the contract; the insurance premium?

A. Yes; after we received this notice on June the twenty-eighth, that we owed three hundred and four dollars, and seventy-two cents, then they later notified us that we were to pay that amount.

Q. Now, this notice that you have in your hand, what is that Exhibit number?

A. That's Exhibit B, the Contract Summary for Nineteen forty-five.

Q. Now, then, you say they notified you later of the premium that was due?

A. Yes.

Q. How was that done?

A. Well, I would have to explain that.

Q. All right.

A. You see, at the time this went out the corporation couldn't determine when the insurance was due, because it was not due until you harvested in the fall of the year, because under the contract you had the right to pay the insurance Company——

64 Mr. CASTERLIN. Just a moment. We object to his discussing the terms of the contract on the ground the contract itself is the best evidence.

The COURT. That is sustained.

By Mr. HOLDEN:

Q. How did they notify you after that written notification there, or statement—Plaintiffs' Exhibit D, is that—you have in your hand?

A. B.

Q. B?

A. That's right.

Q. All right. Now, when did the company notify you at a later date, if they did notify you?

A. Yes; they notified me on or about—on or about the eighth day of November Nineteen forty-five, that there was due——

Mr. CASTERLIN. Just a moment. Was that in writing, Mr. Merrill?

A. No. No; I was down to the office and they told me then what my premium was, that my premium was three hundred and

four dollars, and seventy-two cents. So, I then went to the office and wrote them a short letter, and attached my check to it and took it down to the office, and the girl in the office told me that they had made a slight error, that they had not had time to get all of these notices out at that time, so the time had elapsed under the rules that they had, and there was a slight amount or increase of four dollars and fifty-five cents interest to pay. So I went
65 back to the office and wrote out another check for the full amount of three hundred and four dollars, and ninety-two cents [sic], plus four dollars and fifty-five cents interest, making three hundred and nine dollars and forty-seven cents, and I took that down to the office, and the lady in the office told me to send it direct to the Denver Office. I sent the check to the Denver office on November the eighth, Nineteen forty-five, addressed to the Federal Crop Insurance Corporation, and the attention was called to C. B. Holmes, Branch Manager, Denver Two, Colorado; and the check was paid in the regular course.

Q. Did she give you any reason for telling you to send it direct to the Denver branch office of the defendant corporation?

A. Yes; she said that they were not to accept the money in their office; that I was to send it to the Branch Office in Denver, and that's what I did.

Mr. HOLDEN. If you will, mark this check "Plaintiffs' Exhibit"—That will be L, will it?

(Plaintiffs' Exhibit L, a cancelled bank check, plaintiffs to defendant, dated November 8, 1945, $309.47, marked for identification by reporter.)

(Discussion between counsel for the respective parties, outside the hearing of the court.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit L, marked so for the purpose of identification, I will ask you to state briefly what that is.

A. (Examining Exhibit L.) That's Merrill Brothers' bank check that we delivered to the defendant corporation on
66 November the eighth, Nineteen forty-five, in the amount of three hundred and nine dollars, and forty-seven cents, as a premium on our crop insurance for Nineteen forty-five.

Q. Was that check cashed?

A. That check was cashed and paid. At least, it was paid.

Q. On what date?

A. It was paid on [examining Exhibit L] eleven, twelve, forty-five [sic].

Q. That would be the eleventh month——

A. And twelfth day, in Nineteen forty-five [sic].

Mr. HOLDEN. We offer in evidence the plaintiffs' Exhibit L.

Mr. CASTERLIN. To which we object on the ground it is incompetent, irrelevant, and immaterial, because it does not pertain to any of the insured crop.

The COURT. Doesn't contain what?

Mr. CASTERLIN. Doesn't pertain to any of the insured crop.

The COURT. It will be admitted.

(Plaintiffs' Exhibit L received in evidence by order of the Court.)

Mr. HOLDEN. Will you mark this as "plaintiffs' Exhibit M," please?

(Plaintiffs' Exhibit M, copy of letter, plaintiffs to defendant, dated November 8, 1945, marked for identification by reporter.)

By Mr. HOLDEN:

67 Q. Calling your attention to plaintiffs' Exhibit M, so marked for the purpose of identification, I will ask you to state very briefly what that is.

A. (Examining Exhibit M.) That's a letter, dated April—dated November the eighth, Nineteen forty-five, addressed to the Federal Crop Insurance Company, and signed by Merrill Brothers, by myself.

Q. I will ask you if this instrument is the original letter?

A. Yes; that's the original—No. No; that's a copy of the original.

Q. That's a copy——

A. Yes.

Q. Of the original?

A. Yes.

Q. I will ask you if the original, if a demand was made on the defendant, under plaintiffs' Exhibit H, for the original of plaintiffs' Exhibit M, marked so for the purpose of identification?

A. (Examining Exhibit H.) Yes; it's the fifth article; the fifth letter required under the Exhibit H.

Mr. CASTERLIN. Just a moment.

(Discussion between counsel for the respective parties, outside the hearing of the court.)

Mr. HOLDEN. Have you the original?

Mr. CASTERLIN. You give us awful short time to get them from headquarters. I will have to check.

Mr. HOLDEN. Have all the time you want now.

Mr. CASTERLIN. What's the date on that.

Mr. HOLDEN. That's November the eighth, Nineteen forty-five.

68 (Mr. Casterlin then examined his files.)

Mr. CASTERLIN. No; we don't have it here. Let me see that Exhibit.

(Mr. Casterlin then examined Exhibit M.)

Mr. CASTERLIN. Have you offered it?

Mr. HOLDEN. No; I haven't yet.

(Discussion between Mr. Holden and the witness, outside the hearing of the court.)

Mr. HOLDEN. We offer in evidence the plaintiffs' Exhibit M. They are unable to produce the original.

Mr. CASTERLIN. To which we have no objection, except the general objection which we have heretofore made to the other Exhibits.

The COURT. It will be admitted.

(Plaintiffs' Exhibit M received in evidence by order of the Court.)

Mr. HOLDEN. If you will, mark this for identification, please.

(Plaintiffs' Exhibit N, copy of letter, plaintiffs to defendant, dated November 8, 1945, marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit N, so marked for the purpose of identification, I will ask you to state briefly what that is.

A. (Examining Exhibit N.) That is a letter, dated November the eighth—copy of a letter, dated November the eighth, Nineteen forty-five, addressed to the Federal Crop Insurance Corporation, attention C. M. Holmes, at Denver Two, Colorado, signed by Merrill Brothers, by myself.

69 Q. Where is the original of this letter; what did you do with it?

A. That was mailed to the defendant corporation in Denver.

Q. Through the United States Mail?

A. Yes.

(Mr. Holden then handed Exhibit N to counsel for defendant.)

(Mr. Casterline produced and handed to Mr. Holden a photostatic copy of a document.)

By Mr. HOLDEN:

Q. And on the envelope inclosing this Exhibit, plaintiffs' Exhibit N, did you have sufficient postage to carry it to Denver?

A. Yes.

Mr. HOLDEN. They have a photostatic copy of it, but I have this one marked, so we will offer in evidence the plaintiffs' Exhibit N.

Mr. CASTERLIN. Just the general objection that we have heretofore made.

The COURT. It will be admitted.

(Plaintiffs' Exhibit N received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. Did you make demand upon the defendant corporation for the amount you claim to be due?

A. Yes.

Q. And have they paid——

A. No.

Q. The money, or any part thereof?

70 A. They have not paid any part of it whatsoever.

Q. Calling your attention to plaintiffs' Exhibit A–One, and the instructions and regulations therein contained, have you carried out all of the terms and conditions set forth therein?

A. Yes——

Mr. CASTERLIN. Well, just a moment. We object to that as calling for a conclusion of the witness.

The COURT. That is sustained.

By Mr. HOLDEN:

Q. Examine that and state if you have omitted to do anything that is contained in plaintiffs' Exhibit One—or, A–One rather?

Mr. CASTERLIN. Object to that on the ground it calls for a conclusion, and it invades the province of the jury and the court.

The COURT. There are a great many provisions, I take it, in the document?

(The witness then handed Exhibit A–One to the court.)

The COURT. I might observe, too, that none of these Exhibits have been read to the jury.

Mr. HOLDEN. No; they haven't yet. I was going to read that Exhibit to the jury now.

Mr. CASTERLIN. Mr. Holden, I will stipulate with you that any and all Exhibits heretofore admitted, or hereafter to be admitted, may be read to the jury at any time during the course of these proceedings, without waiving any right for not reading them at the time they were admitted.

Mr. HOLDEN. All right.

71 Mr. HOLDEN. If the court please, if we might have a few minutes recess, before I let this witness go.

The COURT. Yes; it's time for a recess, anyway. That will be all, Mr. Merrill, until after the recess.

Gentlemen of the jury, the court reminds you at this time of the admonition heretofore given you. That will be all for a few minutes, until the Bailiff calls you back.

(The court then adjourned for a short recess. At two-fifty o'clock P. M., court reconvened, and the following proceedings were had in the presence of the jury:)

The COURT. All right, Mr. Holden.

Mr. HOLDEN. Take the stand again, Mr. Merrill, please.

(The witness A. A. Merrill then resumed the witness stand.)

Mr. HOLDEN. Will you mark this, please?

(Plaintiff's Exhibit O, mimeographed letter, dated December 13, 1945, Bonneville County Agricultural Conservation Association, marked for identification by reporter.)

By Mr. HOLDEN:

Q. Calling your attention to plaintiffs' Exhibit 0, I will ask you to state—that is marked for the purpose of identification, I will ask you to state briefly what that Exhibit is?

A. (Examining Exhibit O.) That's a letter written by the County Agricultural Conservation Committee on December the thirteenth, Nineteen forty-five, addressed to Merrill Brothers, and signed by Foster Robertson, Acting Chairman of the Board.

72

Q. You received this through the United States mail?

A. Yes.

(Mr. Holden then handed Exhibit 0 to counsel for defendant, who examined same.)

Mr. HOLDEN. We offer in evidence the plaintiffs' Exhibit 0.

Mr. CASTERLIN. No objection.

The COURT. It will be admitted.

(Plaintiffs' Exhibit 0 received in evidence by order of the Court.)

By Mr. HOLDEN:

Q. Calling your attention, Mr. Merrill, to plaintiffs' Exhibit K, this map, I notice there are different colorings on that. Will you identify the land which you had this crop of wheat on in Nineteen forty-five, the four hundred and sixty acres?

A. (Examining Exhibit K.) There is sixty acres marked with a red pencil on the north side of section thirty-two, right along the north end; then there's all of the northwest quarter of section thirty-two, and the east half of the northwest quarter of thirty-two [sic]; and then forty acres adjoining it, and a hundred acres in the northeast part of thirty-one. The three parts marked in

red were all of the four hundred acres; and then the red part in the top of thirty-two is the sixty acres that was also planted, but was not reseeded. And that's the map that I showed to the board on the day that I signed the application, on March the twenty-sixth, Nineteen forty-five.

73 Mr. HOLDEN. I think, your Honor, I will read plaintiffs' Exhibit A, and A-One to the jury at this time.

The COURT. Very well.

Mr. HOLDEN. This is plaintiffs' Exhibit A. It is designated "Application for Wheat Crop Insurance, Pursuant to the Federal Crop Insurance Act, as amended."

The serial number is "Eight-two dash 0-one-0-five dash eight, Bonneville County, Idaho State.

"A. This application covers the crop years Nineteen forty-five, Nineteen forty-six, Nineteen forty-seven.

"B. The undersigned applicant, as evidenced by his signature in Item F below, hereby applies to the Federal Crop Insurance Corporation (herein called "the Corporation") for insurance to cover his interest as landlord, owner, tenant, or sharecropper in the wheat crop to be seeded for harvest as grain in any of the three years covered by this application. For each year the application covers all insurance units located, or considered for crop-insurance purposes to be located, in the county designated above in which the applicant has an interest at the time of seeding. The insurance shall cover loss in yield of wheat due to unavoidable causes, including drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow, wildlife, hurricant, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board of Directors of the Corporation.

"C. Average yield and premium rate per acre. The average yield—I think that's a small 'e' in parentheses——

Mr. CASTERLIN. Counsel, here is a better copy of that, if you want it—more readable.

(Mr. Casterlin then handed a copy of Exhibit A to Mr. Holden, who examined same.)

74 Mr. HOLDEN. Yes; this looks better (continuing.) "The average yield—small 'e' in parentheses—and premium rate—small 's' in parentheses—per acre for each insurance unit covered by the contract shall be those established by the Corporation for the first year of the contract and shall be on file in the office of the county association. If the insured acquires an interest in other insurance units for the second or third year of the contract, the average yield—small 's' in parentheses—and premium rate—small 's' in parentheses—for the insurance units

shall be those which could have been or were established under the Wheat Crop Insurance Regulations for the first year of the contract.

"D. Insured percentage applied for; Fifty percent."

And under that it says: "Enter fifty-or seventy-five percent."

"E. Class of wheat for the payment of premiums and indemnities: Number two soft white.

"It is understood and agreed that if the class of wheat to be used as the basis for the payment of premiums and indemnities is not entered above, or if the class of wheat designated by the applicant is not customarily grown in the area, the Corporation may enter or change the class of wheat. The class and grade of wheat to be used as the basis for the payment of premiums and indemnities shall be those determined by the Corporation.

"F. Note for premium. Subject to the terms and conditions of Items A through H hereof, all made a part of this note, the undersigned applicant promises to pay to the order of the Federal Crop Insurance Corporation, on or before the applicable maturity date specified in the Wheat Crop Insurance Regulations for each
75 crop year, the amount of premium due from him under the contract for such year, either in cash or wheat, or both, with interest after maturity on any unpaid portion thereof at the rate of one-half of one percent for each calendar month or fraction thereof, except that no interest will be charged on any amount that is paid within two calendar months after maturity.

"Any unpaid amount of this note (eight before or after the maturity date) may be deducted from any indemnity payable under the contract, from the proceeds of any commodity loan to the insured, and from any payment made to the insured under the Soil Conservation and Domestic Allotment Act, as amended, or any other act of Congress or program administered by the United States Department of Agriculture or the War Food Administration.

"Name and Address of Applicant: (Type or print.)

"Name: Merrill Brothers, in care of A. A. Merrill.

"Address: Earl Building, Idaho Falls, Idaho."

"(Signed) Merrill Brothers, by A. A. Merrill.

"(Signature of applicant.)

"Date) Three, twenty-six, Nineteen forty-six."

"(Signed) "Lois Rhead.

"(Witness to applicant's signature.)

"G. Recommendation and certification by the county committee. The members of the County Agricultural Conservation Committe, on behalf of such Committee, as evidenced by his signa-

ture affixed in such capacity below, recommends acceptance of the application and certifies that, to the best of its knowledge and belief, the application has been submitted in accord-
76 ance with the provisions of the applicable Wheat Crop Insurance Regulations and any amendments thereto, and that, if the signature of the applicant in Item F has been affixed by a person who signed as fiduciary or agent, such person had authority to act in such capacity.

"(Date) Three, twenty-six, Nineteen forty-five."

"(Signed) J. E. Thule.

"(Signature of county Committeeman.)

"H. Acceptance by the Federal Crop Insurance Corporation. It is understood and agreed that upon acceptance of the application by a duly authorized representative of the Corporation, as evidenced by his approval below, the insurance contract shall be in effect, provided the application has been submitted in accordance with the provisions of the application and the applicable Wheat Crop Insurance Regulations. It is further understood and agreed that the accepted application and the applicable Wheat Crop Insurance Regulations, including any amendments thereto, constitute the contract between the Corporation and the insured.

"(Date) Five dash twenty-eight dash Nineteen forty-five.

"The Federal Crop Insurance Corporation

"By C. B. Holmes,

"Denver, Colorado."

Mr. Holden. I will read to you plaintiffs' Exhibit A-One:

"United States Department of Agriculture

"Federal Crop Insurance Corporation

"Denver Branch Office

Dear Sir:

77 "The Federal Crop Insurance Corporation has accepted your application for insurance on your Nineteen forty-five spring wheat crop and your Nineteen forty-six and Nineteen forty-seven wheat crops.

"The insurance contract consists of the accepted application and the Wheat Crop Insurance Regulations, copies of which are enclosed. We suggest that you carefully read the provisions of your contract. However, we would like to call your particular attention to some of your responsibilities under the contract.

"Report of Acreage.

"As soon as possible after the wheat crop is seeded, submit to your county AAA committee, on a form which will be provided by the county AAA office, a report showing the spring wheat acreage seeded and the percent interest you have in the crop.

"Damage to or Loss of Crop.

"If you fail to get a stand, or if your wheat crop is damaged and it is not too late to reseed to wheat, you are required under the terms of the contract to reseed unless you put the land to another use before it is too late to reseed. Any acreage of wheat put to another use before it is too late to reseed to wheat will not be covered by insurance. If, after it is too late to reseed to wheat, the crop is damaged to the extent that a loss under the contract is probable, notify your county committee immediately in writing. If any wheat acreage is totally or substantially destroyed after it is too late to reseed to wheat, notify your county committee, request an inspection, and wait until it is inspected and released by a representative of the Corporation before putting the
78 acreage to another use. If, after you have completed harvest, you find that you have not produced your insured production, notify your county committee immediately.

"Transfer of All or Part of Crop.

"If all or any part of your wheat crop is transferred to another person, notify your county committee immediately in writing. Even though you transfer all or a part of your wheat crop to another person, you will be responsible for the payment of the entire premium.

"Premium.

"Your crop insurance premium should be paid immediately at your county AAA office when you are notified it is due. Interest charges will accrue at the rate of one-half of one percent per month or fraction thereof, beginning at the maturity date of your premium note, on any amount not paid within two calendar months after maturity.

"Notice to Tenant.

"If you are a landlord, you should advise your tenant that your wheat crop is insured so that he will not unknowingly violate any of the provisions of the contract.

"Federal Crop Insurance provides farmers the opportunity to join hands for protection against crop losses. A successful crop insurance program will provide a great force for relieving economic distress when crop losses occur.

"Very truly yours,

"C. B. Holmes,

"Branch Manager."

Mr. HOLDEN. Plaintiffs' Exhibit B:

"Contract Summary for Nineteen forty-five.

"A. Name of insured: Merrill Brothers.

79 "B. Address of insured, Earl Building, Idaho Falls, Idaho.

"C. State and county code and identification number, Eight-two dash 0-one-0 dash five dash two.

"D. Name of insured crop, Spring wheat.

"E. Coverage, Fifty percent.

"Part One, Data for Insurance Contract——

Mr. CASTERLIN. Mr. Holden, may I speak to you just a moment?

(Discussion between counsel for the respective parties, outside the hearing of the court.)

Mr. CASTERLIN. So there will be no misunderstanding, we do not insist that the Exhibits be read in full to the jury at any time, but that counsel may at any time read from any part, or the whole thereof, or do it any way they want, during the proceedings, without the necessity of having to read it all at length. I think that was the purpose.

The COURT. Yes; I understand that's what you had in mind.

Mr. HOLDEN. I will finish this Exhibit, and read one more, and we will consent to that, that we can take up the Exhibits at any time we wish.

Mr. CASTERLIN. At any time, any part of them, for any purpose.

Mr. HOLDEN. I will proceed with Exhibit B:

"Farm serial number One-seven-C dash twenty; Acreage insured, *zaro*; uninsurable zero.

"Farm serial number, One-seven-C dash thirty-five; Acreage insured zero, uninsurable zero.

"Farm serial number, One-seven-C dash thirty-six; Acreage insured, zero; uninsurable, zero.

80 "Farm serial number, One-seven-C dash thirty-seven; Acreage insured, one hundred twenty; uninsurable, zero; insured interest in crop, one hundred percent; practice N I; relationship to farm, owner; Premium computations, premium rate per acre, point six, premium seventy-two; average yield per acre, eighteen point eight; maximum insured Production, two-two-five-six.

"Farm serial number, One-two-six-B; Acreage insured, zero; uninsurable, zero.

"Farm serial number, One-three-five-C dash three; Acreage insured, zero; uninsurable, zero.

"Farm serial number, One-three-six-C; Acreage insured, ninety; uninsurable, zero; Insured interest in crop one hundred percent; Practice N I; Relationship to farm, owner; Premium rate per acre, point six; Premium, fifty-four; Average yield per acre, eighteen point eight; Maximum insured production, one-six-nine-two.

"Farm serial number, One-four-four-C-one; Acreage insured, two hundred, ten; Uninsurable, zero; Insured interest in crop, one hundred percent; Practice N I; Relationship to farm, owner; Premium rate per acre, point six; Premium, one hundred, twenty-six; Average yield per acre, eighteen point eight; Maximum insured production, three-nine-four-eight.

"Farm serial number, One-six-one-E; Acreage insured, zero; uninsurable, zero.

"G. Total premium, two hundred fifty-two.

"H. Premium for cotton seed, blank.

"I. Premium reduction, blank.

"J. Premium for contract, two hundred fifty-two.

"Remarks, blank.

"I certify that, to the best of my knowledge and belief,
81 the above data are true and correct and represent all the farms in the county in which the insured had an interest in the above identified crop at the beginning of planting or time of seeding.

"Date, June twenty-eight, Nineteen forty-five.

"Blank, Signature of Committee Representative.

"Part Two. Determination of Premium Due in Cash. (For Branch Office Use)

"Premium for contract (Item J, Part One), two fifty-two.

"Credits prior to maturity, zero.

"Net Premium due at maturity, two fifty-two.

"Net price at maturity, One dollar twenty-one cents.

"Premium due in cash, Three hundred four dollars seventy-two cents

"County Office Final Copy."

Mr. HOLDEN. Plaintiffs' Exhibit E:

"Statement in Proof of Loss.

"Wheat——

By Mr. HOLDEN:

Q. What's that word, flax [indicating]. It's stamped over it.

A. (Examining Exhibit E:) It's just "wheat," right there [indicating].

Q. Yes, but here [indicating]?

A. Either wheat or flax.

Mr. HOLDEN (continuing).

"Merrill Brother, in case of A. A. Merrill, Earl Building, Idaho Falls, Idaho.

"State and county code and identification number Eight-two dash 0-one-0 dash five dash eight.

"Farm serial number One-seven-c dash three-seven; One-
82 three-six-C; One-four-four-C dash one.

"Reported acreage, four hundred twenty.

"Measured acreage, four hundred sixty.

"Average yield, eighteen point eight.

"Insured percentage, fifty percent.

"Insured interest in crop, one hundred percent.

"Part One. Actual Production for the Farm.

"One. Acreage threshed and total production therefrom, two hundred seventy-five acres, twelve hundred fifty-four bushels.

"Two. Appraised production not threshed but otherwise harvested, zero.

"Three. Total actual production for the farm, twelve hundred fifty-four bushels.

"Part Two. Adjustments to Production for the Farm.

"Four. Appraised production for released acreage seeded to a substitute crop, Blank.

"Five. Appraised production for any acreage not harvested, Blank.

"Six. Appraised production for any acreage put to another use without the consent of the Corporation, Blank.

"Seven. Appraised production for any acreage seeded for harvest as grain but cut for hay, Blank.

"Eight. Appraised production for any acreage for causes not insured against, Blank.

"Nine. Blank.

"Ten. Blank.

"Eleven. Total adjustments to production, Blank.

"Twelve. Total seeded acreage and total production, four hundred sixty acres, twelve hundred fifty-four bushels.

83 "Part Three. Basis for Settlement.

"Fourteen. Insured production (the smaller of A or B times C times D times E), thirty-nine hundred and forty-eight.

"Fifteen. Insured's interest in production (production in item twelve or thirteen, whichever is applicable, times E), twelve hundred and fifty-four.

"Sixteen. Amount of loss claimed (item fourteen minus item fifteen), twenty-six hundred, ninety-four.

"Part Four. Causes of Damage.

"Seventeen, Cause of damage, drought; Estimated percent contributed, one hundred percent; Approximate date of damage, July-August

"Eighteen. Secondary, Blank.

"Nineteen. Other contributing, Blank.

"Twenty. The information and data set out in Parts One, Two, Three, and Four of this statement are true and correct and the insured interest in the crop as shown represents such interest at the time of loss and not in excess of the interest reported by the insured as his interest in the crop at the time of seeding and are the basis for the amount of loss claimed in item Sixteen. The furnishing or preparation of any forms, the inspection of the farm, or investigation of loss by an adjuster was done at the request of the insured and shall not constitute a waiver of any

right of the Corporation. In consideration of the payment of this claim, I hereby release the Corporation from all claims for indemnity, damages, or causes of action in connection with the crop and on the farm indicated above which I may have arising under the contract under which indemnity is claimed. In consideration of the settlement of the indemnity, I hereby sell,
84 assign, and transfer to the Federal Crop Insurance Corporation, to the extent of the value of the commodity represented by such settlement, all claims, demands, and causes of action which I may have against any and all persons as a result of the partial or total destruction of the insured crop. I hereby irrevocably constitute and appoint the Federal Crop Insurance Corporation my true and lawful attorney, with full power of substitution and revocation, for me and in my name, or otherwise, but for its own sole use, to take all proceedings and execute any and all instruments fully to effectuate this assignment and give acquittance for all such claims, demands, and causes of action.

"Is there an outstanding collateral assignment? No.

"Date, September twenty-first, Nineteen forty-five."

By Mr. HOLDEN:

Q. That signature is so dim there [indicating]?

A. (Examining Exhibit E.) That's Merrill Brothers, by me. And this is C. N. Scoresby [indicating].

Mr. HOLDEN (continuing).

"Merrill Brothers.

"By A. A. Merrill.

"Signature of Insured.

"Any misrepresentation of fact made in this instrument will subject the maker hereof to the provisions of the United States Criminal Code and the penal provisions of the Federal Crop Insurance Act, as amended.

"Twenty-one. In connection with this Statement in Proof of Loss, I certify that:

"I have made a careful investigation of this claim and, to the best of my knowledge and belief, the facts stated herein are complete, true, and correct; the amount of loss claimed herein by the insured was determined in accordance with
85 the applicable regulations and procedures of the Federal Crop Insurance Corporation; and the signature appearing in item twenty, above, has been affixed by the insured who had the stated interest in the above indicated crop at the time of loss and whose name appears above, or if the signature has been affixed by a person who signs as fiduciary or agent such person had authority to act in such capacity.

"Date, September twenty-first, Nineteen forty-five.

"C. N. Scoresby.

"Signature of Adjuster."

Mr. HOLDEN. I think that's all I am going to read now.

WITNESS. Let's read that to them [indicating Exhibit D].

Mr. HOLDEN. This is Exhibit D:

"Report of Inspection.

"Name of crop, Wheat.

"Merrill Brothers, in care of A. A. Merrill, Earl Building, Idaho Falls, Idaho.

"State and county code and identification number, Eight-two dash 0-one-0 dash five dash eight.

"Farm serial number, One-seven-C-three-seven; One-three-six-C; One-four-C dash one.

"Part One. Acreage Inspection.

"Field of tract identification, One-seven-C dash three-seven; Acreage in field or tract, One hundred, twenty; Cause of damage and condition of crop, Drought.

"Field or tract identification, One-three-six-C; Acreage in field or tract, Ninety; Cause of damage and condition of crop, Drought.

86 "Field or tract identification, One-four-four-C dash one; Acreage in field or tract, Two hundred, fifty; Cause of damage and condition of crop, Drought.

"Part Two. Acreage release.

"The acreage stated below is hereby released subject to the appraisal of the yield per acre indicated and subject to the intended use of the acreage or crop shown below; provided, however, that such appraisal is in accordance with the terms and conditions of the applicable crop insurance contract.

"Field or tract identification, Blank.

"Acreage released, Blank.

"Appraised yield per acre, Blank.

"Intended use, Blank.

"Date, September twenty-first, Nineteen, forty-five.

"C. N. Scoresby.

"Signature of Adjuster.

"Part Three. Adjuster's Narrative Report.

"Include the approximate date of damage, any causes of damage not stated above and all other information necessary in making final settlement with the insured, if a loss is claimed. (If additional space is needed, use reverse side.)

"I inspected this in company with John P. Mix, State Crop Insurance Supervisor. We found the grain had been seeded on new land the first year out of sagebrush. It was a good stand of wheat,

damaged very materially from lack of moisture. In fact, only portion of farm would pay for harvest."

By Mr. HOLDEN:

Q. I will ask you a question, Mr. Merrill: When did this damage occur to the wheat?

87 A. I would say in the latter part of July.

Q. What was that?

A. It held up very well until about the latter part of July, Nineteen forty-five.

Q. And was that too late to reseed anything?

A. Yes; it was too late to reseed.

Mr. HOLDEN. I believe you may ask him.

Cross-examination by Mr. CASTERLIN:

Q. Mr. Merrill, your application bears date of March twenty-sixth, Nineteen forty-five, and how long after that was it before you received a copy of your contract and allied papers from the Denver Office?

A. Oh, I imagine, Mr. Casterlin, about a month; something like that, I imagine.

Q. Isn't it a fact that the first copy of the application and allied papers were lost by you, and you wrote for a duplicate?

A. No. I would like to explain what you have in mind there.

Q. Just answer my question. Isn't it a fact that the first set of papers were lost, and you wrote for duplicates, admitting that the first had been lost?

A. No.

Mr. CASTERLIN. Mark this, please.

(Defendant's Exhibit One, a group of 22 photostatic copies of documents, bound under the certificate and seal of the U. S. Department of Agriculture, marked for identification by reporter.)

88 Mr. CASTERLIN. I now offer in evidence the last page of what has been marked for identification as defendant's Exhibit One, which comes under the certification of the Department of Agriculture, pursuant to Title twenty-eight, Section six, sixty-one, of the United States Code.

(Mr. Casterlin then handed Exhibit One to Mr. Holden, who examined same.)

A. May it please the court, in making that last answer I should like——

Mr. CASTERLIN. Just a moment, please.

A. I have a right to address myself to the court.

Mr. CASTERLIN. I am not getting into an agrument with you. There is a matter pending before the court.

A. That's why I want to address myself to the court, before that goes in.

The COURT. Is it an explanation of your answer?

A. Yes. No matter whether I answer his answer [sic] Yes, or No, both of them would be right, and both of them would be wrong [sic], and that's why I want to explain my answer. And I can explain it very easily, and there will be nothing to this situation, so far as this Exhibit is concerned. I think I have a right to explain my answer.

The COURT. You may make your explanation.

Mr. CASTERLIN. Any objection?

Mr. HOLDEN. No; there will be no objection to the introduction of that. I would like to have him explain his answer, however, first.

Mr. CASTERLIN. May we have a ruling of the court on the offered Exhibit?

The COURT. It will be admitted.

89 (Defendant's Exhibit One received in evidence by order of the Court.)

The COURT. All right, you may make your explanation.

Mr. CASTERLIN. Reading from Exhibit One:

"August twentieth, Nineteen forty-five.

"United States Department of Agriculture,

"Federal Crop Insurance Corporation,

"Four, twenty-five Cooper Building,

"Denver Two, Colorado.

"Re: Nineteen forty-five, Wheat Crop Insurance Contract, Number Eight-two dash 0-one-0 dash five dash eight.

"Gentlemen:

"This will acknowledge receipt of your letter of August seventeenth, relative to the discrepency in the above contract for which I kindly thank you. I had already figured out what was wrong before I received your letter. The entire matter in so far as the number of bushels is concerned is now straightened out in my mind.

"Several weeks ago I received the crop insurance policy and I am embarrassed to state that for some reason or other I have misplaced the policy and cannot find it in my possession anywhere. I am wondering if it would be too much of a burden if you would send me a duplicate copy of the policy. I am very sorry that the policy came up missing but we have searched everywhere in the office and cannot find it. I assure you I would appreciate this courtesy very much.

"Very truly yours

"A. A. Merrill."

Mr. HOLDEN. Why don't you just remove that, counsel, if you will? We don't need to put that other in.

Mr. CASTERLIN. I don't want to destroy the certificate.

Mr. HOLDEN. I admit it's a true copy, and we permit it to be introduced as a photostatic copy, and you can introduce it alone.

Mr. CASTERLIN. And leave the certificate on the rest?

Mr. HOLDEN. Yes; sure you can.

Mr. CASTERLIN. All right.

(Mr. Casterlin then removed the letter just read to the jury from the group of documents originally marked as "Defendant's Exhibit One," and "Defendant's Exhibit One" now consists of one photostatic copy of a letter just read to the jury.)

The WITNESS. Now may I explain my answer, your Honor?

The COURT. Yes.

A. When I wrote this letter on August thirtieth—twentieth, Nineteen forty-five [indicating Exhibit One], I had been searching in my office for an insurance policy. It ran in my mind that I had received from the company a regular insurance policy, like any other insurance company writes——

Mr. CASTERLIN. Now, just a moment. We object to this on the ground that under the Federal law the insurance policy is defined, and consequently any explanation of counsel as to what the insurance policy is is contrary to law. Under regulation number four-one-four point three-seven, of the Wheat Crop Insurance
91 Regulations, the "Insurance contract means the contract of insurance entered into between the applicant and the Corporation by virtue of the application for insurance and these regulations and any amendments thereto." Consequently, the term "insurance contract" is defined by law, and an individual has no right to define the contract.

The COURT. I don't understand that he was trying to define it. You may go ahead.

A. If I can proceed without being interrupted by counsel. When I wrote this letter on August *on August* the twentieth, Nineteen forty-five, I had in mind that the company sent to me a regular insurance policy, like all other companies send. I looked through my files, and through my office, and so forth, and couldn't find it; so I wrote this letter thinking that I had lost it. I received in answer the letter sending me this one here [indicating document], and that was the first time that I was conscious of the fact that that is all there was to the whole policy. So that when counsel asked me the question if I wrote this letter stating I had lost my policy, I said No, I hadn't lost my policy, because this is my policy [indicating Exhibit A], and I had that before me when I

wrote this letter [indicating Exhibit One], but I thought that it was a regular policy and not just one sheet of paper containing the application and the acceptance. So, in explanation to my answer, Mr. Casterlin, the answer was No, that I hadn't lost my policy, but I thought I had at the time; and the answer would be modified to say Yes, that I did write this letter [indicating Exhibit One].

By Mr. CASTERLIN:

Q. Yes——

A. Then, when I got the answer back it cleared up the
92 whole matter, and I discovered then that plaintiffs' Exhibit A was the policy. I had been used to receiving a regular insurance policy, and naturally though that's what I was going to get her, and that's what I was looking for when I discovered I didn't have it. But, after they wrote me, then I learned that Exhibit A was the whole policy.

Q. And then, Mr. Merrill, you, in fact, received two copies of your application and papers forwarded with it?

A. Yes, Mr. Casterlin, I already had Exhibit A, which they had sent to me.

Q. And then you received another one?

A. Yes; I had this [indicating Exhibit A] right before me when I dictated the letter, and they then sent me this one here that I have in my left hand [indicating document], which has not been introduced, but which is a duplicate copy.

Mr. CASTERLIN. Very well. Will you mark this, please?

(Defendant's Exhibit Two, the group of certified copies of documents heretofore marked for indentification as Defendant's Exhibit One, remarked for identification by reporter.)

Mr. CASTERLIN. I now offer in evidence defendant's Exhibit Two, which comes certified pursuant to Title twenty-eight, Section six, sixty-one, of the United States Code.

(Mr. Casterlin then handed Exhibit Two to Mr. Holden, who examined same.)

(Discussion between counsel for the respective parties, outside the hearing of the court.)

Mr. HOLDEN. There is a great many instruments in this proposed Exhibit, your Honor, and I would like a little
93 time to check this over. I don't know whether I would want to make any objection, or not. It would take me half an hour to read them.

The WITNESS. I would also like to see them, too, your Honor.

Mr. HOLDEN. They are all fastened together here.

The COURT. Can you continue your cross-examination without it?

Mr. CASTERLIN. Well, my cross-examination is going to be very short.

The COURT. Well, we will take a few minutes recess at this time, and then perhaps when we again convene again perhaps we can proceed without it, or you can agree on it.

Gentlemen of the jury, the court at this time reminds you of the admonition heretofore given you. That will be all for a few minutes, until the Bailiff calls you back.

(The court then adjourned for a short recess. At four, ten o'clock, P. M., court reconvened, and the following proceedings were had in the presence of the jury:)

(The witness, A. A. Merrill, on the witness stand.)

The COURT. Now, the Exhibit?

Mr. CASTERLIN. Yes, I made the offer.

Mr. HOLDEN. I would like to ask the witness a few questions in order to base an objection, your Honor, if I may do that?

The COURT. Very well.

Mr. HOLDEN. (Examining Exhibit Two.) This first page——

94 Mr. CASTERLIN. That's the same as your Exhibit A.

Mr. HOLDEN. All right. Then, we will start with the second page.

Mr. CASTERLIN: Yes.

By Mr. HOLDEN:

Q. Mr. Merrill, calling your attention to the defendant's Exhibit Two, marked so for identification——

Mr. CASTERLIN. What page would that be?

Mr. HOLDEN. This would be, I think, the second page now.

Mr. CASTERLIN. Counsel——

(Discussion between counsel for the respective parties, outside the hearing of the court.)

Mr. CASTERLIN. Let's mark these.

Mr. HOLDEN. Very well.

(Mr. Casterlin then numbered with a pencil the photostatic documents contained in defendant's Exhibit Two.)

Mr. HOLDEN. There are twenty-one pages in this Exhibit. We will take page two of the defendant's Exhibit—proposed Exhibit Two, which is supposed to be a photostatic copy of that instrument, is it?

Mr. CASTERLIN. Yes; a certified copy, a photographic copy of the original exhibit.

Mr. HOLDEN. Yes.

By Mr. HOLDEN:

Q. Now, then, Mr. Merrill, I will ask you to examine page two of the defendant's proposed Exhibit number Two, and state if you signed such an instrument?

A. (Examining Exhibit Two.) I signed the Exhibit, but
95 when I signed the Exhibit it was in blank, a blank form, and nothing was filled in; the girl handed me the Exhibit, and I signed it; and she told me where to sign it, and I just signed "Merrill Brothers, by A. A. Merrill," and nothing else was in the Exhibit when I signed it.

Q. I will ask you if that was the customary way of transacting business with the company?

A. Yes; every one of those Exhibits——

Mr. CASTERLIN. Just a moment. We object to the question on the ground it calls for a custom, and that is not competent evidence here. We are not trying out customs, we are trying out facts.

The COURT. Sustained.

By Mr. HOLDEN:

Q. Now, page three, that is supposed to be a duplicate, so we pay no attention to that.

Mr. CASTERLIN. That's right.

Mr. HOLDEN. And if it's finally admitted, then we will just tear out these sheets that you don't want?

Mr. CASTERLIN. Yes.

Mr. HOLDEN. There's no use——

By Mr. HOLDEN:

Q. Now, calling your attention to defendant's Exhibit Two, page four, I will ask you if that is your signature, and what the conditions were under which you signed that instrument?

A. (Examining Exhibit Two.) This one—Yes; this one is the same as Exhibit Two [sic]. I signed this "Merrill Brothers, by A. A. Merrill"; It wasn't dated then, and none of the form was filled out. It was just a blank form that I signed when
96 the girl handed it to me.

Q. Did you read either of them?

A. No; I didn't read either of them. She just said, "Here's some blanks to sign," and so I joined them.

Q. And I observe that on that page four of this proposed Exhibit, defendant's Exhibit—defendant's proposed Exhibit number Two, the acreage is stated to be four hundred and twenty point 0. Was that afterwards corrected by the company?

A. Yes; that was afterwards corrected to be four hundred and sixty.

Mr. CASTERLIN. What sheet is that, counsel?

Mr. HOLDEN. That would be on page four.

Mr. CASTERLIN. Yes; that's right.

By Mr. HOLDEN:

Q. Now, calling your attention to page six of defendant's proposed Exhibit number Two, I will ask you to examine that and state whether or not you signed it, and if so under what conditions?

A. (Examining Exhibit Two.) Yes; I signed that "Merrill Brothers, by A. A. Merrill"; it was not dated, and it was not filled out; it was just a blank form. I didn't read the form; she just told me to sign this in connection with my wheat insurance, and I signed that, just like I signed all the rest of them, in blank.

Q. Now, I will call your attention to page eight of defendant's proposed Exhibit number Two, and ask you if you signed that, and under what conditions?

A. (Examining Exhibit Two.) Yes; I signed this "Merrill Brothers, by A. A. Merrill"; it was not dated, and it was
97 not filled out; it was a blank form. The girl handed it to me and asked me to sign that in connection with our wheat crop insurance, and I did, and I didn't read it at the time I signed it. I just signed all three or four of them there in blank, Mr. Holden.

Q. Now, you will observe that there is a date written in in each of these pages that I have called your attention to, and dated as of June thirteenth, Nineteen forty-five. Do you know whether that was the date you signed your name, or not?

A. No; it's not my signature—or, I should say that the date isn't my hand writing, and I don't know when that was signed.

Q. They apparently—The date has been written in with pen and ink?

A. Yes; looks that way.

Q. Or lead pencil. It isn't typewritten?

A. No; it's not typewritten. It's in hand writing, so I don't know who wrote it, or when.

Q. That's true of these other pages I have identified to you?

A. That's correct. I didn't date any of them, and none of them were dated when I signed the blank forms.

Q. Calling your attention to page 10 of defendant's proposed Exhibit number Two, I will ask you who dated that—or, I will ask you to examine it and state if that is your signature, and under what conditions, if it is, you signed that instrument?

A. (Examining Exhibit Two.) Yes; I signed that "Merrill Brothers, by A. A. Merrill"; it was not dated; the dating of
98 it is not my hand writing; and it was in blank when I signed it, the same as the other exhibits I have just mentioned. I

didn't read the exhibit; I just signed where the girl told me to sign.

Q. Calling your attention now to page twelve of defendant's proposed Exhibit number Two, I will ask you to examine that and state whether or not you signed that, and if so under what circumstances?

A. Yes; exhibit twelve [sic], I signed "Merrill Brothers, by A. A. Merrill"; it was undated; the dating is not my hand writing; and it was in blank, and none of it was filled out, at all, when I signed it. I merely signed the blank paper as I did the rest, and at the same time, I presume. I don't know whether it was signed on that date, or not.

Q. And calling your attention to page fourteen of defendant's proposed Exhibit Two, I will ask you to state if that is your signature, and if so under what conditions you signed it?

A. (Examining Exhibit Two.) Yes; I signed this "Merrill Brothers, by A. A. Merrill"; it was in blank at the time I signed, and the date is not my hand writing; it was all in blank, and none of the figures or letters were in there when I signed it. I merely signed the paper in blank, the same as I did the others. I might state this, however, Mr. Holden, that there should only have been nine of them, and I think you have got more than that now. I would want to go over those again. You see, each one of those is one of the units in our farm, and if we didn't have any grain planted in that unit that would show "0", and if we did have grain planted in the unit that would show it was. All of those
99 units were farms that had been given a number before we bought up all that territory, and that's why there are so many of those.

Q. And those units were used prior to the time you acquired the property?

A. Yes; they are the same as is on Exhibit—one of the other Exhibits there. This unit appears here [indicating].

Q. I see. And I call your attention to page sixteen of defendant's proposed Exhibit number Two, and I will ask you to state if that is your signature, and under what conditions, if it is, that you signed it?

A. (Examining Exhibit Two.) Yes; I signed this "Merrill Brothers, by A. A. Merrill"; it was undated when I signed it, and the writing of the date is not my hand writing; it was all blank when I signed it, and there was no letters filled in of none of the information was filled in at the time I signed it. I signed it exactly like I did the other Exhibits of which I have just been speaking.

Q. Calling your attention to page eighteen of defendant's proposed Exhibit number Two, I will ask you to state if that is your signature, and if so, under what conditions you signed it?

A. (Examining Exhibit Two.) Yes; I signed this "Merrill Brothers, by A. A. Merrill"; it was undated, and was in blank; the form was not filled in at all at the time I signed it. I merely signed it along with the rest of them, as I have heretofore testified.

Mr. CASTERLIN. Twenty and twenty-one are just copies of the Exhibits you have already introduced.

Mr. HOLDEN. Yes; that's what I was going to ask you if that's what they were.

100 By Mr. HOLDEN:

Q. Now, I want to ask you, Mr. Merrill, if the pages of the proposed Exhibit—defendant's proposed Exhibit Two, were printed forms of the defendant corporation——

A. Yes.

Q. That you signed?

A. That's right. And they prepared them; the corporation prepared them.

Q. I will call your attention now to what is purported to be a duplicate, and which is page three that I am asking you about——

Mr. CASTERLIN. I will withdraw the offer as to pages three, five, seven, nine, eleven, thirteen, fifteen, seventeen, and nineteen.

Mr. HOLDEN. Well, I will——

Mr. CASTERLIN. And I will also withdraw the offer as to pages one, twenty, and twenty-one. That will hasten things along.

By Mr. HOLDEN:

Q. Page three of defendant's proposed Exhibit number Two appears to be—I will ask you to examine it—only represents a photostatic copy of page two?

Mr. CASTERLIN. Mr. Holden, I have withdrawn the offer as to that page.

Mr. HOLDEN. Yes; but I want to ask him; there is another situation here I would like to clear up.

Mr. CASTERLIN. There is nothing before the court. I have withdrawn the offer, and there is nothing before the court.

101 Mr. HOLDEN. Well, it's necessary to go into this. I observe in this it appears—what is supposed to be the same, identical photostatic copy marked "Duplicate," but the signature doesn't appear on it, and there is no date on this. That's the point I want to bring out. There is no date on these duplicate copies in here; the date is blank on every one of them. But, the ones where his name appears is dated June the thirteenth, in somebody's handwriting.

Mr. CASTERLIN. Now counsel, if you want those in you can offer them yourself. I have withdrawn them from the offer, and there is nothing to consider. If you want those pages in you can offer them.

Mr. HOLDEN. I haven't copies of these.

Mr. CASTERLIN. You have them right in your hand.

Mr. HOLDEN. Yes; but when they come off of this, I wouldn't have much to offer.

Mr. CASTERLIN. We object to the question on the ground it is interrogating him concerning something that is not offered in evidence, and not before the court, in any way, your Honor.

The COURT. The objection is well taken.

Mr. HOLDEN. We object to the proposed Exhibit—defendant's proposed Exhibit number Two, on the ground and for the reason that the same is incompetent, irrelevant, and immaterial; the proper foundation has not been laid; and the evidence shows that the proposed Exhibit was all—was signed on printed forms of the defendant corporation, and were in blank when the witness signed them, and that they have been altered and changed since the signature was affixed on the proposed exhibits.

102 Mr. CASTERLIN. Counsel has already qualified them for admission, by having the witness admit that it is his signature on there. The rest of it goes to the weight which shall be given to the Exhibit. But, he has qualified it for admission now, because the witness said he signed it.

Mr. HOLDEN. We will always qualify him on anything that's right, but that Exhibit has been altered and changed since he signed it, and it is not admissible, and the testimony shows that. For that reason——

The COURT. I didn't understand you. You mean altered after signing?

Mr. HOLDEN. There has been writing added to that Exhibit after it was signed.

The COURT. Yes; the witness testified he signed it in blank.

Mr. HOLDEN. Now, the Exhibit shows that there is certain typewritten statements in there, and other hand writing appearing on that Exhibit, and each of them.

Mr. CASTERLIN. If the court please——

The COURT. Just a moment. How did you propose to separate them; the parts you have withdrawn from the offer?

Mr. CASTERLIN. I will tear them out if this is refused—or, rather, if the offer is admitted.

The COURT. Mr. Merrill, as to these exhibits that you testified you signed, what did you do with them after you signed them?

A. Well, the girl just handed them to me, and I signed the blank forms, and I walked out of the office.

The COURT. What office are you talking about?

A. I am talking about the AAA office here in the courthouse; the Bonneville Agricultural Conservation Committee's office, your Honor.

102 The COURT. Then, you signed them and left them there in that office?

A. That's right, your Honor.

The COURT. It will be admitted.

(Defendant's Exhibit Two received in evidence by order of the Court.)

Mr. CASTERLIN. We understand that only certain pages are offered, and if counsel is insisting now I am willing to tear out the other pages, and we will agree that the other pages are not admitted.

Mr. HOLDEN. I want to interrogate him on those other pages. Though I haven't the originals, I have these, and those photostatic copies of the claimed duplicates are not duplicate copies.

The COURT. The Exhibit can be left intact until that question is determined, if you want to offer that later. But, before the matter is closed, and these Exhibits go to the jury, then, of course, they must be correct.

By Mr. CASTERLIN:

Q. Mr. Merrill, I hesitate to ask this question, but in view of your answers I am required to, for the record. You are a practicing attorney?

A. Yes.

Q. And you have passed upon many contracts?

A. That's right.

Q. And you are able to read and write?

A. That's right. I think so.

Q. I told you I was asking the question for the purpose of protecting the record. You said that you went in and signed

104 these, and you didn't read them?

A. That's right; I didn't read them.

Q. How do you know they were in blank?

A. Because I know at the time they were handed to me it was just a blank piece of paper. I went into this thing fairly and honestly, and I signed just what they told me to down there, and I figured everything was all right. I know that the committee down there was fine and genuine about this whole thing.

Q. Now, it was a printed form, was it not?

A. It was a printed form, and just like I signed all the rest of this Exhibit, they were printed forms, and they were all blanks. They told me to sign them, and I signed them, and I fully relied upon them when I was signing them for our—that our crop was insured.

Q. You can read and write, can't you?

A. You heard me tell you that a moment ago once before.

Mr. CASTERLIN. That's all, Mr. Merrill. Thank you.

A. I thought you would quit.

Mr. HOLDEN. Well, just a moment. I may want to ask you a question or two.

Redirect examination by Mr. HOLDEN:

Q. Now, I would like to clear up a little matter here. Now, calling your attention to plaintiffs' Exhibit A—And there is a letter here regarding when you had asked—written for another policy, and I believe you said that you was expecting an insurance policy?

A. Yes.

Q. Now, what time, about what time did you receive
105 through the United States Mail plaintiff's Exhibit A, this instrument which finally was converted into an insurance policy, as you claim?

Mr. CASTERLIN. I think I will object to that question on the ground it has been gone into previously, and it is repetition.

Mr. HOLDEN. I understood that there was something brought out in connection with that letter that had been written there, and I understood him to say that he got plaintiffs' Exhibit A about a month after it was signed.

Mr. CASTERLIN. Yes, that's right; he testified to that.

Mr. HOLDEN. Well, I understand—I don't think he understood, because I—The matter was gone into, anyway.

Mr. CASTERLIN. Very well.

By Mr. HOLDEN:

Q. I ask you to look at the date given on plaintiffs' Exhibit A, and see when this application was accepted by the defendant corporation.

A. (Examining Exhibit A.) It was accepted on May the twenty-eighth, Nineteen hundred forty-five.

Q. All right. Now, when did you receive that plaintiffs' Exhibit through the United States Mail, if you can recall?

A. Well, it was some time after that; it could have been a week, or two or possibly three weeks after, but it was some time after that I received it.

Q. After May the twenty-eighth?

A. That's right.

Q. And at the time you received plaintiffs' Exhibit A,
106 some time after May the twenty-eighth, included in the envelope was plaintiffs' Exhibit A–One?

A. That's right. And those are the only rules and regulations that I ever received, or ever knew anything about until Mr. Mix came in my office late last fall and stated that they were not going to pay the insurance; and that was after we had gone into the whole thing, and written up all the reports, and everything, ready for payment.

Mr. CASTERLIN. I move to strike that portion of the answer which says those are the only regulations he says he had any knowledge of, because it is contrary to law. He is charged with knowledge, under the Federal statute.

Mr. HOLDEN. I think that the answer should stand, your Honor.

The COURT. Well, that objection is overruled. However, it's not responsive to any question.

Mr. CASTERLIN. I move to strike his answer on the ground it is not responsive.

The COURT. It may be stricken.

Mr. HOLDEN. Now, if you will read the question I will see what the answer is.

Reporter (reading):

"Question: And at the time you received plaintiffs' Exhibit A, some time after May the twenty-eighth, included in the envelope was plaintiffs' Exhibit A–One?"

A. That's right.

By Mr. HOLDEN:

Q. And plaintiffs' Exhibit A–One and the provisions of plain-
107 tiffs' Exhibit A are the only regulations that was ever delivered to you by defendant corporation, or any of its agents?

A. Yes, sir; that's correct.

Mr. CASTERLIN. To which question we object on the ground it is incompetent, irrelevant, and immaterial, and it is contrary to law. The witness is charged with knowledge of the regulations by virtue of the Federal Register Act.

The COURT. The objection is overruled, and the answer may stand.

Mr. HOLDEN. I believe that is all.

Mr. CASTERLIN. That's all. Thank you, Mr. Merrill.

A. You are welcome, sir.

Mr. HOLDEN. We will call Mr. J. E. Wheeler.

J. E. WHEELER, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. HOLDEN:

Q. You may state your name.
A. J. E. Wheeler.
Q. Where do you live, Mr. Wheeler?
A. Ririe.
Q. How long have you resided in this county and state?
A. Oh, thirty years.
Q. I will ask you if in the year Nineteen forty-five you were a member of the Agricultural Conservation Committee of Bonneville County?
A. Yes, sir.
Q. And I will ask you if you are acquainted with Mr. Adrian A. Merrill, one of the copartners of the plaintiff in this action?
A. Yes, sir.
108 Q. How long would you say you had known him?
A. Twenty years, I guess.
Q. I will ask you if you recall Mr. Merrill making application for insurance from the defendant company?
A. Yes, sir.
Q. And I will ask you if you were present at the time that he signed the application for that insurance, along about—about the twenty-sixth of March, Nineteen hundred and forty-five?
A. Yes, sir.
Q. Do you recall Mr. Merrill exhibiting to you and others there a map?
A. Yes, sir.
Q. I hand you plaintiffs' Exhibit K. Examine it, and see if that appears to you as the one that he had there that day?
A. (Examining Exhibit K.) Yes; I think it is.
Q. Now, do you recall the conversation that was had between you and Mr. Merrill on the day that application, plaintiffs' Exhibit A, was signed in the office of the county committee?
A. Well, I don't know whether——
Q. I just asked you if you recalled that?
A. Yes; I recall that.
Q. Now, did it have to do in connection with this application?
A. That's right.
Q. I wish you would just relate to the court and jury that conversation.
Mr. CASTERLIN. To which question we object on the
109 ground that under the law the corporation cannot be bound or estopped, nor can any provision be waived by any rep-

resentative of the corporation, and anything which was in the knowledge of any representative cannot be charged to the knowledge of the corporation defendant, unless the same be in writing.

Mr. HOLDEN. I think we will have some lot, when the time comes, to show that the corporation transacts business through its agents, and that it is bound by the knowledge of the agents.

The COURT. He may answer.

A. What was the question?

Mr. HOLDEN. Read the question, Mr. Reporter.

REPORTER (reading): "Question: I wish you would just relate to the court and jury that conversation?"

A. I think when Mr. Merrill come in to see about this insurance he said that he had just read in the paper where the deadline was a certain date for crop insurance, and he come in to see about his crop insurance.

By Mr. HOLDEN:

Q. Did he mention anything about sowing spring grain?

A. Yes.

Mr. CASTERLIN. Just a moment. We object to the question on the ground it is leading.

Mr. HOLDEN. No; I don't think that's leading.

The COURT. Well, first give the witness a chance to complete his statement of the conversation.

Mr. HOLDEN. Yes.

A. Yes; he said he wanted to plant some spring wheat, because his winter wheat had killed out, and I think he had some additional besides this four hundred acres of winter wheat that he wanted to sow in the spring. And it was discussed among the group there what kind of wheat it would be better to sow on this winter killed grain.

Mr. HOLDEN. I am not sure that I just heard that answer to that question. I wonder if you would read it to me, please, Mr. Reporter?

REPORTER (reading): "Answer: Yes; he said he wanted to plant some spring wheat, because his winter wheat had killed out, and I think he had some additional besides this four hundred acres of winter wheat that he wanted to sow in the spring. And it was discussed among the group there what kind of wheat it would be better to sow on this winter killed grain."

Mr. CASTERLIN. At this time, if the court please, I move to strike his answer on the ground that his answer is contrary to the terms of the insurance contract, and by his testimony they are altering the terms of the contract of insurance. My position in that is just this: There either is, or is not, a contract of insurance. There is no contract of insurance unless the application was submitted

in accordance with these regulations and it was approved, and included the written application and the regulations, and under the terms of the regulations the insurance contract means the contract of insurance entered into between the applicant and the corporation by virtue of the application for insurance and these regulations, and any amendments thereto. That's the complete contract. Now, we have the application, and we have the regulations, which is referred to in the application, and which is a
111 matter of knowledge by reason of publication in the Federal Register, and that regulation, together with the application, constitutes the insurance contract. Now, when you read the insurance contract, the application and these regulations, here is what the contract provides for—"No notice to any county committee or representative of the corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the corporation."

Now, here he is calling for evidence on the part of this witness which is contrary to the terms of the written contract of insurance. And this plaintiff, having pleaded the contract of insurance, and the contract of insurance having been defined by law, and having taken advantage of the contract, he cannot deny its terms. And all this evidence is is to alter the terms of a written contract.

Mr. HOLDEN. That matter has been discussed heretofore, your Honor.

The COURT. The motion is denied.

(Discussion between counsel for plaintiffs, outside the hearing of the court.)

By Mr. HOLDEN:

Q. Do you recall Mr. Merrill mentioning the number of acres that had winter killed?

A. I think it was four hundred acres, the way I remember it.

112 Mr. HOLDEN. That's all.

The COURT. Just a moment, Mr. Wheeler. There may be some cross-examination.

Cross-examination by Mr. CASTERLIN:

Q. Mr. Ward, have you discussed—Mr. Wheeler, pardon me. Have you discussed this case with Mr. Merrill—Mr. A. A Merrill?

A. No.

Q. Haven't gone over the facts in the case, or the history of it, of what transpired?

A. No.

Q. You are testifying here entirely from memory, are you?

A. That's right.

Q. So that if what happened some time ago should happen to be a little different, it—why, it would be just because your memory had failed you?

A. Yes.

Mr. CASTERLIN. That's all. Thank you.

Mr. HOLDEN. That's all, Mr. Wheeler. Call Mr. Sayer.

J. R. SAYER, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. HOLDEN:

Q. You may state your name.

A. J. R. Sayer.

Q. Your residence?

A. Idaho Falls.

113 Q. And occupation?

A. I haven't any—Farming.

Q. What, if any, official position did you hold with the Agricultural Conservation Committee in Nineteen hundred and forty-five?

A. Secretary of the county committee.

Q. Calling your attention to plaintiffs' Exhibit A, I will ask you if that is a regular form of application that is made for insurance with the defendant corporation?

A. (Examining Exhibit A.) Yes, it is.

Q. And those forms are kept in the office of the committee——

A. They are.

Q. Right along?

A. Yes.

Q. And calling your attention to plaintiff Exhibit B, is that a regular form that was prepared by the company, and kept in the office of the county committee?

A. The forms are furnished to the office in blank, and the data is placed on there by the employees of the office.

Q. Well, I say, is that one of the froms that is kept in that office?

A. (Examining Exhibit B.) Yes.

Q. (Handing document to witness.) And what Exhibit is that?

A. (Examining document.) B-One.

Q. B–One. Is that on a regular form?

A. It is.

Q. And that was prepared in the office of the county committee?

114 A. It was.

Q. And calling your attention to plaintiffs' Exhibit D, is that prepared on a regular form in the office of the county committee?

A. (Examining Exhibit D.) Yes, sir.

Q. And was that instrument filled out by the defendant company in the office?

A. Filled out by the employees of the Triple A in the office.

Q. And calling your attention to plaintiffs' Exhibit E, I will ask you if that is prepared on a regular form that the defendant corporation has for use in the proof of loss?

A. (Examining Exhibit E.) It is.

Q. And I will ask you if that was prepared in the office of the county committee; the typewritten part in there?

A. It was.

Q. Do you have any recollection of this statement in proof of loss, plaintiffs' Exhibit E, having been made in the office of which you were the secretary?

A. Yes, sir.

Q. And do you know from what information plaintiffs' Exhibit E was prepared?

A. Well, no doubt it was——

Mr. CASTERLIN. Well, just a moment. Do you know?

A. Yes.

By Mr. HOLDEN:

Q. All right, just state them.

A. The data reported on this form was secured from an inspection made by the adjuster of the farm of Merrill Brothers.

115 Q. And was it also inspected, if you know by Mr. John P. Mix, the state supervisor?

A. John P. Mix, in company with C. N. Scoresby, inspected the farm.

Q. And do you know who made the appointment and the arrangement for the inspection?

A. Yes.

Q. Who did?

A. Well, it was made under my supervision; yes.

Q. Calling your attention to plaintiffs' Exhibit A again, that is the application of the plaintiff, Merrill Brothers, was that application signed in blank, if you know, Mr. Sayer?

A. Yes.

Q. And are most of these—or, aren't all of them signed in blank?

Mr. CASTERLIN. Just a moment. We object to the question as being too general.

Mr. HOLDEN. He is the secretary of the company; he ought to know.

Mr. CASTERLIN. I am not questioning who he is. I am objecting to the question on the ground it is too general, has reference to no particular items, or papers or contracts, or anything.

Mr. HOLDEN. I was referring to the application for wheat crop insurance, that's what I was referring to.

Mr. CASTERLIN. We still insist that it is too general, because other applications are not in issue here, your Honor.

The COURT. That is sustained.

116 By Mr. HOLDEN:

Q. Now, Mr. Sayer, directing your attention to plantiffs' Exhibit B–One, the contract summary for Nineteen forty-five, I observe that in this left hand column it refers to Farm Serial Number One-seven-C-two-0, and there are three, six—about eight of those serial numbers. Would you tell us what those are, what they are for, and how they come to be there?

A. Well, under the program in the office each farm is set up and designated with a number, and we call those farms, as they are set up and designated by number, as a work sheet farm; and these work sheet farms may be assembled into a farming unit, and will comprise maybe ten or twelve, or one or two, and so forth, of these work sheet farms, and under a farming unit one operator may operate half a dozen, or a dozen work sheet farms.

Q. And how would it be with the set-up on the Merrill property?

A. Well, it comprises all these work sheet farms that are listed.

Q. Now, in this, these serial numbers, do they represent the plaintiffs' lands located on the west side of the river?

A. Yes.

Q. And are those lands of the plaintiffs, Merrill Brothers, included within the agricultural adjustment program?

A. Yes.

Q. And were in Nineteen hundred and forty-five?

A. Yes.

Q. I would like to ask you another question, if you can
117 tell us: Does the Federal Crop Insurance Corporation insure crops on lands that are not included within the agricultural adjustment set-up or program?

A. No.

Q. And what crops does the defendant corporation insure in this locality?

Mr. CASTERLIN. Just a moment. We object to that; that's a matter that's covered by the policy and the regulation which is a part of the policy, what crops are included.

By Mr. HOLDEN:

Q. I will ask you this—Withdraw that question, and ask you this: Are there any other crops, besides wheat, that the defendant corporation insures in this locality?

A. They insure barley.

Q. And did they in Nineteen forty-five?

A. Yes, sir.

(Discussion between counsel for plaintiff, outside the hearing of the court.)

By. Mr. HOLDEN:

Q. Do you recall being in the office at the time Mr. Merrill—for Merrill Brothers—signed their application for insurance?

A. Yes; I was in the office.

Q. And do you recall any conversations that were had by Mr. Adrain Merrill at that time, regarding his proposed insurance on the crops?

A. Not too much in detail; no.

(Further discussion between counsel for the plaintiff.)

By Mr. HOLDEN:

Q. Is this agricultural adjustment program, is that
118 commonly known as and called the Triple A program?

A. Yes, it is. The Triple A stands for Agricultural Adjustment Agency.

Q. And any wheat grower that's signed up under the Triple A program is eligible for crop insurance with the Federal Crop Insurance Corporation?

A. That's right.

Q. Now, in insuring the crops, who is it that fixes the basic yield upon which the insured production is based under this program?

A. Well, that's under the supervision of the county committee.

Q. Now, I am going to call your attention to defendant's Exhibit Two—I think that there is just certain pages that are in evidence—and we will look at page two, and I will ask you if page two of defendant's Exhibit Two was prepared in your office, or the office of the county committee, if you know?

A. (Examining Exhibit Two.) Do you mean the original of this?

Q. Yes; the original of that. That's supposed to be a photostatic copy.

A. (Examining Exhibit Two.) I don't know.

Q. Look at page four, then, that would be the next page, I think.

Mr. CASTERLIN. The second page.

A. (Examining Exhibit Two.) The question you asked me was if we prepared that in our office?

By Mr. HOLDEN:

Q. Yes: was that prepared in the office of the county
119 committee?

A. I don't know.

Q. Then, I will ask you, then, to look at page four—look at pages four and six, if you will, then, and see if you recognize any of them?

A. Page four I looked at before.

Q. Oh. Then, look at page six.

A. (Examining Exhibit Two.) No; I don't know whether it was prepared in the office, or not.

Q. I wish you would take a look at pages two, and four, and six, and look particularly at the date, where it says, "June thirteen, Nineteen forty five," and see if you can recognize the hand writing in that date there?

A. (Examining Exhibit Two.) No, I don't. It's not my writing.

Q. You don't recognize the hand writing, nor recognize the instruments?

A. No.

Mr. HOLDEN. That's all.

Cross-examination by Mr. CASTERLIN:

Q. Mr. Sayer, these farm members, for instance, Seventeen C dash twenty, represents a certain farm for insurance purposes?

A. Yes.

Q. Do you have in the office a geodetic description of those?

A. Have what?

Q. The description of these lands, which are designated by number, by section, township, and range?

120 A. We have a map designating the farm indicated by the number, so we can locate it.

Q. Oh, I see. You haven't compared these numbers with the description of the land in this amended complaint, to see if they conform, have you?

A. With the amended complaint?

Q. Yes.

A. No; I haven't seen the amended complaint.

Mr. CASTERLIN. I think that's all, Mr. Sayer. Thank you.

Mr. HOLDEN. That's all.

The COURT. We will recess at this time. Gentlemen of the jury, the court again reminds you that during the trial of this case, at all times, both in and out of court, it is your duty not to talk about this case, either among yourselves, or with anyone else, nor to permit anyone to talk either to you or within your hearing on any subject connected with the trial, nor to form or express any opinion on the merits of the case until after it is finally submitted to you.

That will be all now until ten o'clock tomorrow morning.

(The court then adjourned for the day.)

(Tuesday, March nineteenth, Nineteen hudred forty-six. Court reconvened at ten o'clock, A. M., and the following proceedings were had in the presence of the jury):

The COURT. Call the roll of the jury, Mrs. Clerk.

121 (The Clerk then called the roll of the jury, and all jurors answered present.)

The COURT. The plaintiff may call your next witness, Mr. Holden.

Mr. HOLDEN. Might we have just a moment or two, your Honor?

The COURT. Very well, if it will help any.

(Discussion between counsel for plaintiff, outside the hearing of the court.)

Mr. HOLDEN. We will call Mr. Merrill.

A. A. MERRILL, recalled on behalf of the plaintiffs.

Mr. HOLDEN. Mark this as "plaintiffs' Exhibit E–One," please.

(Plaintiffs' Exhibit E–One, original "Statement in Proof of Loss," marked for identification by reporter.)

(Counsel for the respective parties then examined Exhibit E–One, and held a discussion outside the hearing of the court.)

Mr. CASTERLIN. The defendant admits that the plaintiffs' Exhibit E, admitted in evidence, is a correct copy of the original Statement in Proof of Loss, which was signed by Merrill Brothers, by A. A. Merrill, and which was thereafter and on the same day signed by C. N. Scoresby.

Mr. HOLDEN. That will be all, then, Mr. Merrill.

(Discussion between counsel for plaintiff, outside the hearing of the court.)

Mr. HOLDEN. If the court please, we would like to make a slight amendment to paragraph two of the plaintiffs'

122 Amended Complaint, in the fifth line, after the word "general," to insert the word "wheat"; and in the same line, after the word "business," to insert the words "for members who have qualified under the Agricultural Adjustment Agency program," to conform to the proof.

Mr. CASTERLAIN. Who have qualified under——

Mr. HOLDEN. Who are qualified under the Agricultural Adjustment Agency program.

Mr. CASTERLIN. You offer that as an amendment under what conditions?

Mr. HOLDEN. To conform to the proof.

Mr. CASTERLIN. No objection.

The COURT. The amendment will be ordered made.

Mr. HOLDEN. We will call Mr. Ward for a few questions, and then we will close.

L. J. WARD, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. HOLDEN:

Q. You may state your name.

A. L. J. Ward.

Q. Your residence?

A. I live out in what is known as the Coltman community in this county.

Q. In this county?

A. Yes, sir.

Q. How long have you resided in this county and state, Mr. Ward?

A. For fifty-two years.

123 Q. Did you hold any official position in Nineteen forty-five, with the county Agricultural Conservation Committee of Bonneville County?

A. Yes, sir.

Q. And what was that position?

A. I was chairman of the county committee.

Q. Do you recall—Do you recall the date—I will fix it for you, Mr. Ward—when the plaintiff signed—March twenty-sixth, Nineteen forty-five, when the plaintiff signed their application for wheat crop insurance?

A. Well, I remember that Mr. Merrill was one of the first fifty in that group, which would come about that time.

Q. Do you recall being in the office of the county committee at the time he made the application?

A. Well, I wouldn't say that I recall definitely that day. It's very possibly that I was there.

Q. Well, do you recall seeing Mr. Merrill present the members of the committee with a map while he was there, along about that time?

A. Yes, sir.

Q. I hand you plaintiffs' Exhibit K, and ask you if that looks like the instrument or map that he had when he was in there, along in the latter part of March, Nineteen forty-five?

A. (Examining Exhibit K.) Yes, sir.

Q. Do you recall a conversation that Mr. Adrian Merrill had with members of the committee at the time he was in there with the map, regarding his proposed wheat crop that he proposed to sow?

A. Yes, sir.

124 Q. Will you relate, as you recall it, what that conversation was?

A. As I remember it, he pointed out the different fields that he wished this insurance on.

Mr. CASTERLIN. May it please the court, it is understood that our general objection continues to go to the testimony of this witness, as well?

The COURT. Yes.

By Mr. HOLDEN:

Q. What else was said?

A. Well, I don't remember any details, but it was his purpose, of course, to acquire this insurance.

Mr. CASTERLIN. Just a moment. We object to him stating what his purpose was; that's a conclusion of this witness, and invading the province of the jury.

The COURT. Yes; just state, as nearly as you can, what he said.

A. As I remember, he requested insurance on those certain plots as he pointed them out; those were the different fields that he was wishing to have insurance on.

By Mr. HOLDEN:

Q. And did he mention anything about any of his crops having winter killed?

Mr. CROWLEY. Just a moment. We object to this on the ground it is leading.

Mr. HOLDEN. Well, this is to refresh his memory.

The COURT. Well, you should first give him an opportunity to repeat what he can recall of the conversation, before any such questions are asked.

By Mr. HOLDEN:

Q. All right. Then, state anything further that you
125 recall now that was mentioned at that time.

A. Well, I believe, as I remember, that it was also talked about that this was to be a reseeding, this was on reseeding; that was Mr. Merrill's report.

Mr. HOLDEN. That is all.

Cross-examination by Mr. CROWLEY:

Q. Mr. Ward, did you ever have any written authorization from any officer or authorized representative of the Federal Crop Insurance Corporation to negotiate for insurance covering any reseeded crops upon—that is, spring wheat reseeded upon winter wheat acreage?

A. No, sir.

Q. And did you have——

Mr. HOLDEN. Just a moment. If your Honor please, if the answer might be stricken for the purpose of a motion—an objection, I should say.

The COURT. Yes; you may have your objection.

Mr. HOLDEN. We object to the question for the reason it is incompetent, irrelevant, and immaterial, and doesn't prove or tend to prove any of the issues in the case; and it's not proper cross-examination.

The COURT. The objection is overruled, and the answer may stand.

Mr. HOLDEN. Were you through?

Mr. CROWLEY. Yes; that's all, Mr. Ward.

Mr. HOLDEN. The plaintiff rests.

Mr. CROWLEY. May we have a moment's recess, in order to confer, your Honor? I think we have—we may have a matter to present.

126 Mr. CASTERLIN. I don't think it will be necessary to excuse the jury. It will only take about a minute.

The COURT. You mean to present the motion?

Mr. CASTERLIN. No; to determine whether to put the motion.

The COURT. All right.

(Discussion between counsel for defendant, outside the hearing of the court.)

The COURT. I will ask you, Mr. Holden, to make the amendment on the original complaint which has been allowed.

Mr. HOLDEN. All right, your Honor.

Mr. CROWLEY. We would ask, your Honor, that the jury be excused while we make the motion.

The COURT. Very well. Gentlemen of the jury, the court again reminds you of the admonition given you before. I will excuse you now, and ask you to remain without and beyond the hearing of the court until the Bailiff calls you back.

(The jury then retired from the courtroom, and the following proceedings were had in the absence of the jury:)

Motion to dismiss and denial thereof

Mr. CROWLEY. The defendant, Federal Crop Insurance Corporation at this time moves the court to dismiss this case on the ground that—on the following grounds:

First, that the plaintiffs have made an insufficient case to present to the jury, and in particular have omitted either to allege or prove that the plaintiffs, A. A. Merrill and N. D. Merrill, copartners, doing business under the firm name and style of Merrill Brothers have filed with the County Recorder of Bonne-
127 ville County a certificate required to be filed for the assumption of the name "Merrill Bros.," as required by the assumed business name statute of the State of Idaho.

Second, that the plaintiffs have introduced in the case in chief the application for insurance, and an acceptance of the application, but have failed to introduce the third and integral part of the contract of insurance, consisting of the Federal Regulations, which are, by the terms of the application, made expressly a part of the insurance contract; so that the regulations are not, in fact, as such before the court to be presented to the jury as a part of the contract; hence, the whole of the contract has not been introduced in evidence.

Fourth [sic], that the evidence is wholly insufficient in this case to show the insurance of any wheat crop insurable under the Federal Regulations, Part four-0-four, Chapter Four, Title Seven—Agriculture, appearing in the Federal Register, Ten Federal Register, at one-five-eight-five.

Fifth, that the plaintiffs have failed, in the event any cause of action exists with respect to the sixty acres of nonreseeded wheat, to offer any proof by which the sixty-acre area, or the wheat produced thereon, can be segregated or determined, and in that respect the evidence is wholly insufficient to go to the jury.

I believe that is all of the motion, your Honor.

(Discussion between counsel for defendant, outside the hearing of the court.)

Mr. CROWLEY. Yes. That the evidence submitted is wholly insufficient to sustain any verdict that might be returned by the jury in this case against the defendant.

128 The COURT. Do you submit it?

Mr. CROWLEY. We would like to be heard on it, your Honor.

The COURT. Very well, you may present it.

(Counsel for the respective parties then argued the motion to the court.)

The COURT. The record may show that the motion is denied on all propositions raised. Will you call the jury in, Mr. Bailiff?

(The jury then returned to the courtroom, and the following proceedings were had in the presence of the jury:

The COURT. The defense may open.

Mr. CROWLEY. We will call Mr. John P. Mix.

The COURT. Do you desire to make an opening statement to the jury?

Mr. CROWLEY. I think perhaps we can waive that, your Honor.

The COURT. Very well. Come forward, and be sworn, Mr. Mix.

JOHN P. MIX, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. CROWLEY:

Q. Will you state your name, please?

A. John P. Mix.

Q. During the year Nineteen forty-five, what official position did you occupy with the United States Government?

A. I am the state director of the Federal Crop Insurance Corporation.

120 Q. In what Department is that Corporation?

A. The Department of Agriculture.

Q. Were you present on the occasion of a conversation had in the month of August, Nineteen forty-five, upon the premises of Mr. Merrill and his partner, west of Idaho Falls, Idaho?

A. Yes.

Q. Do you recall about what date that was?

A. (Producing and examining document.) August fourteenth, Nineteen forty-five.

Q. Who were present at that time, Mr. Mix?

A. Mr. Merrill, Mr. C. N. Scoresby, a Mr. Seth Hansen from Teton County, and myself.

Q. What was the occasion of the visit to those premises at that time?

A. We were out inspecting a proposed—or, rather, a reported loss on the Merrill wheat crop under the crop insurance.

Q. Was Mr. Merrill, of counsel here, there at that time, Mr. Mix?

A. Yes.

Q. Will you state what that conversation was, as nearly as you can remember it?

A. We discussed the loss—it was a very evident loss to the crop by drought—and I informed Mr. Merrill that inasmuch as three work sheet farms were involved under the crop insurance application, that production must be kept separate for all work sheets;

and I advised him to thresh what he could from a standpoint of whether it would afford—there was enough wheat, sufficient to thresh.

130 Q. Did you at that time have any discussion concerning reseeding of wheat?

A. No.

Q. Was there in that conversation any statement made concerning reseeding of wheat?

A. None, whatsoever.

Q. Did you at that time, or prior to that time, have any knowledge of the fact that any of this crop had been reseeded?

A. No, sir.

Q. When did you first ascertain that fact, if you did so ascertain it?

A. The date I first learned that it was on reseeded winter wheat acreage was October the eighteenth, nineteen forty-five.

Q. October eighteenth?

A. October eighteenth, nineteen forty-five.

Q. In your capacity as state director, are you the person directly responsible to the Washington office?

A. That's correct.

Q. Did you ever receive from the Washington office any authority to divert from any of the regulations established in Part four-one-four, Title Seven, Chapter Four, Agriculture, with respect to insurance of wheat crops in the State of Idaho?

A. No, sir.

Mr. Holden. We object to the question for the reason it is incompetent, irrelevant, and immaterial, and doesn't prove or tend to prove any of the issues in the case.

The Court. It's overruled.

A. No, sir.

By Mr. Crowley:

131 Q. In particular, were you ever authorized in writing by anyone to write contracts of insurance, either personally or through any of the agents of the corporation over whom you had supervision, covering spring wheat reseeded upon winter killed wheat sown in the fall of nineteen forty-four?

Mr. Holden. The same objection.

A. No, sir.

Mr. Holden. Just a moment.

The Court. Yes; when there is an objection, wait until the ruling before you answer.

Mr. Holden. We make the same objection we just made to the previous question.

The COURT. It's overruled. He may answer.

A. No, sir.

By Mr. CROWLEY:

Q. Did you ever authorize the county committee, or any other agent of the Federal Crop Insurance Corporation to deviate from the regulations as respects reseeded crops?

Mr. HOLDEN. The same objection, your Honor.

The COURT. He may answer.

A. No, sir.

By Mr. CROWLEY:

Q. To whom is the county committee directly responsible, Mr. Mix?

A. On crop insurance, you mean?

Q. On crop insurance.

A. They are responsible to the state Triple A office.

Q. And to whom is the state Triple A office responsible?

A. To the Agricultural Adjustment Agency, in Washington, D. C.

132 Q. And through what channel does the instruction from Washington come with respect to the insurability of crops through your office, or the AAA office?

A. Through the AAA office.

Q. Was any instruction received from any source, through either of those channels, in the year Nineteen forty-five, allowing a deviation from prohibition against insurance of reseeded crops?

Mr. HOLDEN. We object to the question for the reason it is incompetent, irrelevant, and immaterial, and doesn't prove or tend to prove any of the issues in the case.

The COURT. He may answer.

A. No; nothing was received.

(Discussion between counsel for defendant, outside the hearing of the court.)

Mr. CROWLEY. Will you mark this as "defendant's Exhibit," whatever number it is?

(Defendant's Exhibit Three, Federal Register, Volume 10, Number 27, marked for identification by reporter.)

(Mr. Crowley then handed Exhibit Three to counsel for plaintiffs, who examined same.)

(Discussion between counsel for the respective parties, outside the hearing of the Court.)

Mr. CROWLEY. We offer in evidence the defendant's Exhibit Three, which bears the seal of the National Archives of the United States, being a copy of the Federal Register of Wednesday, February seventh, Nineteen forty-five, containing the wheat crop in-

surance regulations, Part four-one-four, Chapter Four,
133 Title Seven, Agriculture, for the year Ninteen forty-five.

Mr. HOLDEN. We object to the proposed Exhibit for the reason the proper foundation has not been laid; on the further ground it is incompetent, irrelevant, and immaterial, and does not prove or tend to prove any of the issues in the case.

The COURT. That's the regulations pleaded in the answer, it is?

Mr. CASTERLIN. Yes.

Mr. CROWLEY. It is, if your Honor please.

The COURT. It will be admitted.

(Defendant's Exhibit Three received in evidence by order of the Court.)

Mr. CROWLEY. In conformity with the stipulation regarding reading parts of the Exhibits, I wish to read part of the wheat crop insurance regulations, if your Honor please.

The COURT. Very well.

Mr. CROWLEY. I will read section four-one-four point four-two (reading from Exhibit Three): "Modification of insurance contract. No notice to any county commitee or representative of the corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the corporation; nor shall any
134 provision or condition of the insurance contract or any forfeiture be held to be waived by any delay or omission by the corporation in exercising its rights and powers thereunder or by any requirement, act, or proceeding, on the part of the corporation or of its representatives, relating to appraisals or to any examination herein provided for."

I will read section four-one-four point three-seven (v) (reading from Exhibit Three): "Wheat crop means all seeded spring and winter wheat, including volunteer wheat, other volunteer small grains and vetch, growing with the seeded wheat crop, and including small grains seeded with the growing wheat crop on acreage not released by the corporation. The term wheat crop shall not include volunteer wheat not growing with the seeded wheat crop, wheat seeded with a mixture of flax or other small grains or vetch, true type winter wheat seeded in the spring, winter wheat in the Ninteen forty-five crop year, and spring wheat which has been reseeded on winter wheat acreage in the Nineteen forty-five crop year."

Mr. CROWLEY. At this time, your Honor, in view of the fact that the admitted Exhibit, the whole Volume ten, Number twenty-seven of the Federal Register, contains many other Federal documents aside from the regulations referred to, I offer, and would like with the consent of counsel to substitute, an official printed copy, published by the Government Printing Office, of the same regulations if counsel and the court would examine that.

(Mr. Crowley then handed a document to counsel for plaintiffs, who examined same.)

Mr. HOLDEN. As I understand, you just want to sub-
135 stitute this for——

Mr. CROWLEY. Yes.

Mr. HOLDEN. There is no objection to the substitution.

The COURT. Very well, it will be ordered made.

Mr. CROWLEY. Will you mark this document the "defendant's Exhibit Three" by substitution.

(Defendant's Exhibit Three A, printed copy of Wheat Crop Insurance Regulations, marked for identification by reporter, and received in evidence by order of the court, in substitution of Defendant's Exhibit Three.)

Mr. CROWLEY. You may cross-examine.

Mr. HOLDEN. There is no cross-examination.

Mr. CROWLEY. That's all. The Government rests.

The COURT. You mean the defendant?

Mr. CASTERLIN. Yes; the defendant.

Mr. CROWLEY. The defendant rests, may it please the court.

Mr. HOLDEN. May we have a few minutes recess, your Honor?

The COURT. Very well. Gentlemen of the jury, the court reminds you again of the usual admonition. That will be all until the Bailiff calls you back.

(The court then adjourned for a short recess. At eleven-twenty o'clock court reconvened, and for the following proceedings were had in the presence of the jury:)

136 The COURT. We are ready for the plaintiff's rebuttal, Mr. Holden.

Mr. HOLDEN. We are ready, your Honor. We will call Mr. Merrill.

A. A. MERRILL, called as a witness on behalf of the plaintiffs, on rebuttal, testified as follows:

Direct examination by Mr. HOLDEN:

Q. You are the same A. A. Merrill that has been on the witness stand before in this case?

A. Yes.

Q. Did you hear Mr. Mix's testimony to the effect that on August fourteenth, Nineteen forty-five, he was out on your—on

the plaintiffs' ranch, and that in a conversation he had with you he told you to keep the work sheets separate on your proof, or words to that effect?

A. Yes; I heard that testimony.

Q. Was there anything said about that?

A. No; there was not. Giving all due respect to Mr. Mix, Mr. Mix did not tell me to keep anything separate. He just simply said we had had a terrific loss there, and to come into the office and fix up the papers and the company would pay the claim.

Mr. HOLDEN. That's all.

Mr. CASTERLIN. No questions.

Mr. HOLDEN. The plaintiff rests.

Mr. CROWLEY. No sur-rebuttal.

The COURT. We will recess at this time before the argument. It will take some little time for the submission of this case, and the preparation of the Instructions.

137 So, gentlemen of the jury, the court again at this time reminds you that during the trial of this case, at all times, both in and out of court, it is your duty not to talk about the case, either among yourselves, or with anyone else, or to permit anyone to talk, either to you or within your hearing on any subject connected with this trial, nor to form or express any opinion on the merits of the case until after it is finally submitted to you.

That will be all now for you gentlemen until one-thirty this afternoon.

(The jury then retirned from the court room, and the following proceedings were had in the absence of the jury:)

Motions for directed verdict and nonsuit and denial thereof

Mr. CROWLEY. At this time, if the court please, the defendant moves the court to direct a verdict for the defendant, upon the grounds which have heretofore been stated in the motion for nonsuit, without reiteration of those grounds, in the interest of saving time.

The COURT. You are renewing that motion, also?

Mr. CROWLEY. We are renewing the motion for nonsuit at this time.

The COURT. The motions will be denied. That will be all until one-thirty.

(The court then adjourned for the noon recess. At one-thirty o'clock, P. M., court reconvened, and the following proceedings were had in the presence of the jury:)

The COURT. Call the roll of the jury.

(The Clerk then called the roll of the jury, and all jurors answered "Present".)

138 The COURT. The plaintiff may open the argument.

(Counsel for the respective parties then argued the case to the jury.)

(At the conclusion of the argument the Court instructed the jury, the Bailiff was sworn, and the jury retired in charge of the Bailiff to consider their verdict.)

139 *Instructions of the Court to the Jury*

Gentlemen of the jury, you will listen to the Instructions of the Court, which state the law applicable to this case.

Instruction No. 1

The plaintiffs bring this action to recover upon a policy of insurance entered into with the defendant.

In their complaint they allege that on the 26th day of March 1945, at the special instance and request of the defendant the plaintiffs made application in writing to the defendant for wheat crop insurance covering the 1945 spring wheat crop and the 1946 and 1947 wheat crops on plaintiff's lands in this county: that shortly prior to the time the plaintiffs made application for the insurance they fully informed the defendant that all of the lands, except 60 acres thereof, had been planted to fall wheat in the fall of 1944, and that the wheat had completely winter killed, and that all the land would be planted to number two soft white Early Bart spring wheat in the spring of 1945; that the defendant then and there represented to and informed the plaintiffs that all of the wheat crop so planted on the said premises was eligible for insurance for the year 1945, and that the defendant would insure said crop, provided the same was planted to spring wheat; that on the 28th day of May 1945, the defendant corporation duly accepted the plaintiffs' application for said wheat crop insurance, and delivered a duplicate copy thereof to the plaintiffs, together with a letter of acceptance and instructions; that during
140 the months of March and April 1945, the plaintiffs planted upon their said premises 460 acres of number two soft white Early Bart spring wheat; that on June 28, 1945, a Contract Summary for 1945 was prepared and filed by the defendant corporation, specifying the number of acres planted by plaintiffs, the insured interest in the crop, the premium rate per acre, the premium to be paid, the average yield per acre, as set up by the defendant corporation for the locality in which the plaintiffs' premises are located, and also the maximum insured production; that through error the acreage planted was stated in said Contract Summary for 1945 to be 420 acres instead of 460 acres actually

planted; that the insured production in bushels was stated to be 3,948 instead of 4,324, which was the correct insured production in bushels, and the net price at maturity was stated to be $1.21, and should have been $1.29; that the average yield for plaintiffs' premises, as fixed by the defendant in said Contract Summary for 1945 was 18.8 bushels per acre; that plaintiffs actually harvested from said premises in the year 1945 1,254 bushels, with an average protein test of 13.85, and that the price the plaintiffs received upon the sale of said wheat was $1.29 per bushel, which was the market price thereof.

Plaintiffs further allege that the wheat crop made a good average growth until about the middle of July 1945, and thereafter the entire crop was lost because of drought, with the exception of the 1,254 bushels which the plaintiffs were able to and did harvest; that on the 7th day of August 1945, the plaintiffs notified the defendant in writing, through its agent the Bonneville County Agricultural Conservation Committee of the loss, and requested an inspection of the crop; that thereafter, and on the 21st day of September 1945, the defendant corporation, acting by and
141 through its duly authorized agents, John P. Mix, and C. N. Scoresby, did make an inspection of the crop, and said agents made a report of inspection to the defendant, and delivered a copy thereof to the plaintiffs; that on the 21st day of September 1945, the plaintiffs made and delivered to the defendant their statement of proof of loss; that the said statement in proof of loss was certified by the defendant's agent, C. N. Scoresby; that shortly prior to November 8, 1945, the defendant notified the plaintiffs that there was due under the terms of their contract of insurance for the premium earned thereon the sum of $304.92, plus $4.55 interest, and notified the plaintiffs to forward said sum direct to the Federal Crop Insurance Corporation at Denver, Colorado; that on the 8th day of November 1945, the plaintiffs forwarded to the defendant at its office in Denver, Colorado, the sum of $309.47, in payment thereof, and that the defendant accepted said sum in payment of the premium; that the plaintiffs have fully performed all of the terms and conditions of the contract of insurance by them to be done and performed. That there is now justly due and owing from the defendant to the plaintiff the sum of $3,960.30, in cash, or in lieu thereof 3,070 bushels of number two soft white wheat with an average protein test of 13.85, no part of which has been paid; that the plaintiffs have made demand upon the defendant for the payment of the said sum, and that the defendant has refused and still refuses to pay the same or any part thereof.

Wherefore plaintiffs pray judgment against the defendant for the sum of $3,960.30.

Instruction No. 2

The defendant, answering plaintiffs' complaint, denies that the plaintiffs made their application for insurance at the special
142 instance and request of the defendant, and denies that the plaintiffs made application for wheat crop insurance covering the 1945 spring wheat crop; and in this connection alleges that the plaintiffs made application in writing to the defendant for crop insurance on the 1945 crop of spring wheat in Bonneville County, Idaho, in accordance with Part 414 of the Wheat Crop Insurance Regulations issued pursuant to the act, that is, the Federal Crop Insurance Act, all of which are a part of the written application, which regulations exclude from insurance spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year. Defendant denies that at any time or place the plaintiffs fully informed the defendant, or informed the defendant at all, that all of the land mentioned in their complaint, except 60 acres thereof, or any number of acres had been planted to fall wheat in the fall of 1944, and that said wheat had completely winter killed; denies that the defendant at any time or place reported to, informed, or told the plaintiffs, or either of them, that all of said wheat crop planted on said land was eligible for insurance for the year 1945, and that the defendant would insure said crop provided the same was planted to spring wheat, contrary to or in contradiction to the written application which contained all the above mentioned regulations by adoption and express reference thereto; alleges that at the time of the acceptance of the application for insurance the defendant had no knowledge or information whatever, that the said wheat land, or any part thereof, had been seeded to wheat in the fall of 1944 for the crop year 1945; denies that any part of said land had not been reseeded on winter wheat acreage in the 1945 crop year; and alleges that all of the land seeded to wheat in the spring of 1945 was reseeded on
143 winter wheat acreage in the 1945 crop year and not insurable by the defendant; denies that the plaintiffs seeded a spring wheat crop on their farms in 1945 within the meaning of the Federal Crop Insurance Act, the regulations above mentioned issued in pursuance thereof, and the terms of said application for insurance; denies that the defendant insured the plaintiffs' 1945 spring wheat crop, except according to the terms and conditions of the application for insurance, the Federal Crop Insurance Act, and the regulations issued pursuant thereto; denies that through inadvertance and mistake the defendant's Contract Summard for

1945 was incorrect in the number of acres therein stated to have been planted by the plaintiffs, or at all, and denies that said Contract Summary for 1945 was incorrect as alleged by the plaintiffs; in this connection the defendant alleges that the Contract Summary for 1945, dated June 28th, 1945, was executed from information furnished by the plaintiffs prior to the time when the defendant learned that the plaintiffs did not seed spring wheat on their farms in 1945 within the meaning of the Crop Insurance Act, regulations issued pursuant thereto, and the application for insurance; and that the figures entered in column ten of said form, dated June 28th, 1945, were incorrectly computed, and that a corrected form Contract Summary for 1945, dated July 10th, 1945, was executed with respect to plaintiff's farm, showing a maximum insured production of 3,948 bushels, and that a copy thereof was mailed to the plaintiff; defendant admits that the average yield for plaintiffs' farm was established at 18.8 bushels per acre, and that 1,254 bushels of wheat were produced on plaintiffs' farm in 1945, but denies that said production was from a wheat crop within the meaning of the Crop Insurance Act, regulations issued
144 pursuant thereto, and *and* the application for insurance.

Defendant further alleges that the County Committee refused to accept the premium from the plaintiff, and further alleges that no premium was due from the plaintiffs to the defendant for the year 1945 crop year, for the reason that the plaintiffs did not plant a wheat crop in 1945 within the meaning of the Crop Insurance Act, the regulations issued pursuant thereto, and the application for insurance, and denies that any premium, whatsoever, for the 1945 crop was earned pursuant to the terms of said contract of insurance.

Wherefore the defendant prays that plaintiffs take nothing by reason of their complaint in this action.

Instruction No. 3

The court instructs you, gentlemen, that a recital by the court of what the plaintiff and the defendant respectively claim to be the facts, is not to be considered by the jury as a statement by the court of the facts proved in this case, but simply a recital of what the plaintiff and the defendant respectively allege the facts to be. The court does not express to the jury any opinion upon the facts as proved in this case, and it is immaterial to the jury what may be the views of the court with reference to the facts proven. Neither by these instructions or by any other given to you, nor by any words uttered or remarks made by the court during the trial, does or did the court intimate or mean or wish to be understood as giving an opinion as to what the proof is, or as to what it is

not, or what the facts are or what are not the facts herein. It is solely and exclusively for the jury to find and determine the facts, and this they must do from the evidence, and having
145 done so then apply them to the law as stated in these instructions, and under your oath as jurors you must accept the instructions given you by the court as the law applicable to this case, and you have no authority to consider or be controlled by anything else as the law except as given you by the court. The court is the exclusive judge of the law, and you are the exclusive judges of the facts.

Instruction No. 4

Where a clause in an insurance policy is susceptible of more than one construction, the construction most favorable to the insured should be adopted. Contracts of insurance are to be considered in view of their general objects, rather than on a basis of a strict technical interpretation.

Instruction No. 5

A contract of insurance must receive a just and reasonable interpretation. The actual intent and meaning of the parties when the agreement was entered into as deduced from the contract as a whole, from its subject matter, from the purpose of execution and from the situation of the parties when they made it, must control its construction.

Instruction No. 6

An insurance company will not be permitted to defeat a recovery upon an insurance policy issued by it, by proving the existence of facts which would render it void, where it had full knowledge of such facts when the policy was issued.

Instruction No. 7

Gentlemen of the jury, you are instructed that the County Agricultural Conservation Committee is the duly authorized agent of the defendant corporation and the knowledge of the agent
146 is the knowledge of the corporation on all matters pertaining to the contract of insurance.

Instruction No. 8

You are instructed that the contract of insurance in this case consists of the application for insurance, the acceptance of the application for insurance, and the Federal Regulations controlling crop insurance for the year 1945.

Instruction No. 9

The defendant is a corporation organized under authority of an act of Congress of the United States. As such it is an agency of the United States Government, created and acting within the Department of Agriculture. In its business of insuring producers against loss of crops, and while acting within the scope of the authority given it by the act of Congress, it is subject to the same rules of equity and fair dealing, and enjoys the same benefits and privileges as other persons or corporations engaged in the same business, no greater and no less.

Instruction No. 10

You are instructed that in this case the plaintiffs assert the existence of and rely upon a contract of insurance written under the Federal Crop Insurance Act, and covering a crop of spring wheat.

The term "wheat" as relates to federal crop insurance for the year 1945 has a limited meaning fixed by regulations promulgated by the defendant. As so defined no crop insurance was authorized to be written upon 1945 spring wheat reseeded on winter wheat acreage.

You are instructed that the Federal Regulations controlling contracts of crop insurance such as under consideration in this case also contain the following provisions:

147 "Modification of insurance contract. No notice to any county committee or representative of the corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the corporation; nor shall any provision or condition of the insurance contract or any forfeiture be held to be waived by any delay or omission by the corporation in exercising its rights and powers thereunder or by any requirement, act or proceeding, on the part of the corporation or of its representatives, relating to appraisal or to any examination herein provided for."

These regulations were made and adopted by the defendant to govern the conduct of its business, and to govern the conduct of its agents in the pursuance of its business, and to protect the defendant against unauthorized acts of any of its agents. These regulations are binding upon all persons dealing with the defendant corporation with knowledge of the existence of such regulations, and these regulations must be given full force and effect in all

cases, except in cases where the enforcement of such regulations, or any of them, would result in the perpetration of a wrong or injustice upon an innocent person dealing with defendant corporation in good faith, and without any knowledge of the existence of such regulations.

So, in this case, if you find from the evidence that the
148 plaintiffs, or either of them had knowledge of these regulations or any of them at the time they made application to the defendant for crop insurance, then the plaintiffs must be held to be bound by the regulations of which they had knowledge, and such regulations, in that event, must be given full force and effect by your verdict. And in case you so find, you will exclude from your verdict, if you should return a verdict for the plaintiffs, any amount for any loss sustained to wheat planted upon any of the land which was planted to fall wheat in the fall of 1944, and reseeded in the spring of 1945.

On the other hand, if you find that neither of the plaintiffs had any knowledge of the existence of these regulations at the time they made application to the defendant for crop insurance, and that they in good faith relied upon the statements and acts of the defendant, acting by and through its duly authorized agents, in accepting plaintiffs' application for insurance, and that they thereafter complied with all of the terms and conditions of the insurance contract, so far as the same were known to them, and that the defendant, through the County Agricultural Conservation Committee, or any other authorized agent, knew that the plaintiffs' wheat, or any part thereof, was to be reseeded on winter wheat acreage, and with such knowledged represented to plaintiffs that it would insure said wheat, and thereafter accepted plaintiffs' application for such insurance, and thereafter accepted from the plaintiffs the premium required by it for such insurance, then the defendant must be held to have waived the regulation prohibiting the insuring of spring wheat grown upon winter wheat acreage,
and must be held to be estopped to assert such regulations, or
149 any other regulation promulgated by it which would void, or prevent the enforcement of, the insurance contract which it entered into with the plaintiffs. And, if you so find from a preponderance of the evidence, then your verdict will be for the plaintiffs for such amount as will compensate them for the loss they sustained within the contemplation of the insurance contract, as you find to have been shown by a preponderance of the evidence, if any.

Instruction No. 11

If you find for the defendant, that is, if you find that the insurance contract does not cover wheat grown upon land which was

seeded to wheat in the fall of 1944, and reseeded in the spring of 1945, then you will find and determine from the evidence what loss, if any, has been shown to have been sustained by the plaintiffs, within the meaning of the insurance contract, upon the lands or acreage, if any, which was planted to spring wheat in the spring of 1945, but which was not planted upon land which had been seeded to winter wheat in the fall of 1944, and return a verdict for the plaintiffs and against the defendant for that amount only.

If, however, you find for the defendant as hereinabove stated as to the wheat grown upon winter wheat acreage, and should further be unable to determine from the evidence before you what loss, if any, was sustained, within the meaning of the insurance contract, upon spring wheat which was grown upon land not seeded to winter wheat in the fall of 1944, then you cannot return a verdict for the plaintiff in any amount, but must return a verdict for the defendant.

Instruction No. 12

You are instructed that the burden of proof rests upon the
150 plaintiffs to establish the facts, which are essential to make out their case, by fair preponderance of evidence. By this is meant such evidence as, when weighed with that which is offered to oppose it, has more convincing power in the minds of the jury. It is not a technical term at all, but means simply that evidence which outweighs that which is offered to oppose it. It does not necessarily mean that a greater number of witnesses shall be produced on one side or the other, but that, upon the whole evidence, the jury believe the greater probability of the truth to be upon the side of the party having the affirmative of the issue.

In determining upon which side the preponderance of the evidence is, the jury should take into consideration the opportunity or opportunities of the witnesses for seeing or knowing the facts or things about which they have testified; their conduct and demeanor while testifying; their interest or lack of interest, if any, in the result of the suit; the probability or improbability of the truth of their several statements, in view of all the other evidence, facts, and circumstances proved on the trial; and from all these facts and circumstances determine upon which side is the weight or preponderance of the evidence.

Instruction No. 13

The court has no power to charge you upon the facts or to indicate to you, either directly or indirectly, its views upon the merits. It is the duty of the court to charge you upon the law only. As jurors sworn to try the cause upon the law and the

evidence you have no right to assume that the court has any views as to the verdict that should be arrived at as the result of your deliberations in this case. You must enter upon your de-
151 liberations with the understanding that the court has no opinion or idea as to what your verdict should be.

The jury should not consider, or in any way, or to any extent, be influenced or controlled by, the remarks or statements of the court in ruling upon the admissibility of evidence, or by evidence offered but not received, or by evidence ordered stricken from the record by the court, or by arguments of counsel on propositions of law addressed to the court during the course of the trial. Your verdict should be based upon the evidence submitted at the trial and the instructions of the court applicable thereto, and upon nothing else.

Instruction No. 14

The court instructs the jury that you are the exclusive judges of the credibility of the witnesses, and it is your duty to reconcile any seeming conflict that may appear in the testimony as far as may be in your power upon the theory that each witness has sworn to the truth. When this cannot be done, you may consider the conduct of the witnesses upon the witness stand; the nature of the testimony given by them; to what extent, if any, they are corroborated or contradicted by other testimony, their interest, if any, in the cause; their relation to the parties; and such other facts appearing in the evidence as will, in your judgment, aid you in determining whom you will or will not believe. You may also, in considering whom you will or will not believe, take into account your experience and relations among men.

If you believe that a witness, or any number of witnesses, have wilfully and knowingly testified falsely in regard to any material matter, you may disregard such witnesses' testimony,
152 except insofar as it is corroborated by other credible evidence or by facts or circumstances appearing in the case.

Instruction No. 15

You are further instructed that while you are the exclusive judges of the facts and the weight to be given to the testimony of the several witnesses, still it is equally the province of the court to deal with the law of the case, and it is your duty under your oaths as jurymen to accept the law as given by the court without hesitation or reservation, and apply such law to the facts proved, and so find your verdict, regardless of your own opinion of what the law is, or should be, and regardless also of what counsel upon either side may have stated the law to be.

Instruction No. 16

The instructions given you by the court should be read and considered together. No one of them states all the law of the case, or states the law completely as to the whole case. But all of them when taken together state the law which governs the case, and which is to be applied to the facts, as you may determine the facts to be, and which must guide and direct you in your deliberation in arriving at a verdict.

You are to draw no inference whatever as to the facts in the case from the instructions given you by the court. The court instructs as to the law, without reference as to whether the evidence introduced upon the subject instructed upon is satisfying and convincing, or as to whether it is simply slight or unconvincing.

Instruction No. 17

When you have retired to your jury room you will elect one of your number foreman. Three-fourths or nine of your num-
153 ber may return a verdict. If less than the entire jury return a verdict those so agreeing upon a verdict will sign the same. If the entire jury agree upon a verdict the foreman alone will sign it. When you have reached a verdict you will return into open court.

Idaho Falls, Idaho, March 19, 1946.

(Signed) C. J. TAYLOR,
District Judge.

154 *Plaintiffs' requested instructions*

Come now the plaintiffs and respectfully move the court to give to the jury the following requested instructions:

Dated this 18th day of March 1946.

(Signed) HOLDEN & HOLDEN,
A. A. MERRILL,
Attorneys for Plaintiffs.

Instruction No. 1

Gentlemen of the jury, you are instructed that if you believe that the plaintiffs notified the County Agricultural Conservation Committee or any of its members at the time or shortly before the application for insurance was signed that plaintiffs' 1945 spring wheat crop was planted on land that had been planted to winter wheat in the fall of 1944 and had winter killed, and if you further believe that the defendant insured said 1945 spring wheat crop, after having been so notified, the doctrine of estoppel applies,

and the defendant is estopped to say that it did not insure the plaintiffs' crop, and you will find for the plaintiffs.

State vs. Twin Falls Etc. Water Co., 30 Idaho, 41, at page 68 and 69.

Carr vs. The United States, 98 U. S. 432.

Independent Gas Etc. Co. vs. T. B. Smith Co., 51 Idaho, 710, at page 724 and 725, 40 CYC, 270.

Troendly vs. J. I. Case Co., Ante, Page 578–8 Pac. 2d, 276 21 C. J. 1255, Section 270.

Mabee vs. Continental Casualty Co., 37 Idaho, 667, at
155 page 679, 680, and 681 and cases therein cited.

Refused. Covered by instructions given.

(Signed) C. J. TAYLOR, *Judge*.

Instruction No. 2

Gentlemen of the jury, you are instructed that if you believe from the evidence that plaintiffs planted 400 acres of said premises to winter wheat in the fall of 1944, and that during said winter, said wheat killed out and in the spring of 1945, the plaintiffs recultivated and planted said land to Early Bart spring wheat, and the County Agricultural Conservation Committee were notified of such facts at the time of the signing of the application, or shortly before said time that the application was signed, then you must find that the defendant corporation is estopped to say that it did not insure the plaintiffs' 1945 spring wheat crop and you will find for the plaintiff.

State vs. Twin Falls Etc. Water Co., 30 Idaho, 41 at page 68 and 69.

Carr vs. The United States, 98 U. S. 432.

Independent Gas Etc. Co. vs. T. B. Smith Co., 51 Idaho, 710, at page 724 and 725, 40 CYC, 270.

Troendly vs. J. I. Case Co., Ante, Page 578, 8 Pac. 2d. 276 21 C. J. 1253, Section 270.

Mabee vs. Continental Casualty Co., 37 Idaho, 667, at page 678, 680, and 681 and cases therein cited.

Refused. Covered by instructions given.

(Signed) C. J. TAYLOR, *Judge*.

Instruction No. 3

156 An insurance company will not be permitted to defeat a recovery upon an insurance policy issued by it, by proving the existence of facts which would render it void where it had full knowledge of such facts when the policy was issued.

Muss vs. U. S. Fidelity and Guarantee Company, 35 Idaho, 393 Section #—.

Given.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 4

Gentlemen of the jury, you are instructed that the County Agricultural Conservation Committee is the duly authorized agent of the defendant corporaion and the knowledge of the agent is the knowledge of the corporation on all matters pertaining to the contract of insurance.

Carroll vs. Hartford Fire Ins. Co., 28 Idaho, 40[illegible]

Given.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 5

While the representations made by the appellants were about a matter which the law requires to be of public record when the person setting up the estoppel is mislead or deceived by the active actions, declarations and conduct of the other party, even in the case of constructive notice by a matter of record, the one to whom such conduct is imputable will be estopped from thereafter asserting the contrary to his previous declarations, actions and conduct. In this case certain members of the County Agricultural Cons. Association have testified that they had actual knowledge of the conditions of plaintiffs' wheat crop and that it was planted
157 on ground that had theretofore been planted to fall wheat in the year 1944. Therefore I instruct you that such knowledge to the agent is knowledge to the defendant corporation and the defendant corporation is now estopped to say that it did not insure plaintiffs' wheat crop.

Marshall Wells Co. vs. Kranlich, 48 Ida. 355, at page 371.

Eastwood v. Standard Mines Etc. Co., 11 Idaho 195; 39 LRA NS 500.

Refused. Covered by instructions given.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 6

Contracts of insurance are to be construed in view of their general objects and strict technical interpretation is to be avoided. Where language may be given two meanings, one of which permits recovery and the other does not, it is to be given the construction most favorable to the insured.

O'Neil vs. New York Life Ins. Co., 152 Pac. 2d, at page 709 (Idaho).

Watkins vs. Federal Life Ins. Co., 54 Idaho, 174.

Refused. Covered by instructions given.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 7

It is fundamental in this jurisdiction that in construing contracts of insurance, the contract as a whole must be construed and if there are two inconsistent clauses appearing in an insurance contract, the one most favorable to the insured will be adopted.

O'Neil vs. New York Life Ins. Co., 152 Pac. 2d at page 709.

158 Watkins vs. Federal Life Ins. Co., 54 Idaho 174.

Refused. Covered by instructions given.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 8

A contract of insurance includes not only what is expressly stated, but also what is necessarily to be implied from the language used.

Aleksich vs. Mutual Benefit and Health and Accident Association, 164 Pac. 2d 372.

Refused. Not applicable in this case.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 9

You are instructed, gentlemen of the jury, that insurance policies will be strictly construed against the insurer and liberally construed in favor of the insured.

Sweeney and Smith Co. vs. St. Paul Insurance Co., 35 Idaho 303.

Refused. Covered by instructions given.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 10

Where a clause in an insurance policy is susceptible of more than one construction, the construction most favorable to the insured should be adopted. Contracts of insurance are to be considered in view of their general objects, rather than on a basis of a strict technical interpretation.

Sweeney & Smith Co. vs. St. Paul Fire and Marine Ins. Co., 35 Idaho 303.

159 Given.

(Signed) C. J. TAYLOR, *Judge.*

Instruction No. 11

A contract of insurance must receive a just and reasonable interpretation. The actual intent and meaning of the parties when the agreement was entered into as deduced from the contract as a whole, from its subject matter, from the purpose of execution and from the situation of the parties when they made it, must control its construction.

City of Pocatello vs. Fargo, on rehearing, 41 Idaho 454 at 464.

Given.

(Signed) C. J. TAYLOR, *Judge*.

Instruction No. 12

Gentlemen of the jury, you are instructed that generally, insurance contracts are prepared by the insurance company, and uncertainties must be construed most strongly against the one who caused the uncertainties to exist, i. e., the one who prepared the contract.

Aleksich vs. Mutual Benefit Health and Accident Association, 164 Pac. 2d 372, page 376.

Refused. Covered by instructions given.

(Signed) C. J. TAYLOR, *Judge*.

Instruction No. 13

Gentlemen of the jury, you are instructed that Subdivision A, of Section 508 of the Federal Crop Insurance Act, as amended, provides in part as follows:

Section 518. Agricultural commodity as used in this title means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soy beans, sugar beets, sugarcane, timber, forest timber, potatoes, and other vegetables, citrus and other fruits, tame hay or any other agricultural commodity determined by the Board, pursuant to subsection 2, of Section 508 of this title, or any one or more of such commodities as the context may indicate.

You are therefore instructed, gentlemen of the jury, that the Board of Directors of the defendant corporation have no right or authority to interpret the word "Wheat crop" other than as is prescribed by the act itself.

Subdivision A, of Section 508 of the Federal Crop Insurance Act as amended, and particularly Section 518.

Refused. Not correct.

(Signed) C. J. TAYLOR, *Judge*.

Instruction No. 14

Gentlemen of the jury, you are instructed that if you believe that the plaintiffs notified the County Agricultural Conservation Committee or any of its members at the time or shortly before the application for insurance was signed that plaintiffs' 1945 spring wheat crop was planted on land that had been planted to winter wheat in the fall of 1944 and had winter killed, and if you further believe that the defendant insured said 1945 spring wheat crop, after having been so notified, the doctrine of estoppel applies, and the defendant is estopped to say that it did not insure the plaintiffs' crop, and you will find for the plaintiffs.

State vs. Twin Falls Etc. Water Co., 30 Idaho 41 at pages 68 and 69.

Carr vs. The United States, 98 U. S. 432.

Independent Gas Etc. Co. vs. T. B. Smith Co., 51 Idaho 161 710, at pages 724 and 725; 40 CYC 270.

Troendly vs. J. I. Case Co., Ante, page 578, 8 Pac. 2d 276; 21 C. J. 1253, Section 270.

Mabee vs. Continental Casualty Co., 37 Idaho 667, at pages 679, 680, and 681 and cases cited therein.

Refused. Covered by Instructions given.

(Signed) C. J. TAYLOR, *Judge*.

Instruction No. 15

Gentlemen of the jury, you are instructed that if you believe from the evidence that plaintiffs planted 400 acres of said premises to winter wheat in the fall of 1944, and that during said winter, said wheat killed out and in the spring of 1945, the plaintiffs recultivated and planted said land to Early Bart Spring Wheat, and the County Agricultural Conservation Committee were notified of such facts at the time of the signing of the application, or shortly before said time that the application was signed, then you must find that the defendant corporation is estopped to say that it did not insure the plaintiffs' 1945 spring wheat crop and you will find for the plaintiff.

State vs. Twin Falls Etc. Water Co., 30 Idaho 41 at pages 68 and 69.

Carr vs. the United States, 98 U. S. 432.

Independent Gas Etc. Co. vs. T. B. Smith Co., 51 Idaho 710, at pages 724 and 725; 40 CYC 270.

Troendly vs. J. I. Case Co., ante, page 578, 8 Pac. 2d 276; 21 C. J. 1253, Section 270.

Mabee vs. Continental Casualty Co., 37 Idaho 667, at pages 679, 680, and 681, and cases therein cited.

162 Refused. Covered by instructions given.

(Signed) C. J. TAYLOR,
District Judge.

Filed March 19, 1946.

163 *Defendant's request for instructions*

The defendant respectfully requests that the attached instructions be given to the jury in this case, in event this case shall be submitted to the jury.

Dated March 19th, 1946.

(Signed) E. H. CASTERLIN,
ARIEL L. CROWLEY,
Attorneys for Defendant.

No. 1

You are instructed that in this case the plaintiffs assert the existence of and rely upon a contract of insurance written under the Federal Crop Insurance Act, and covering a crop of spring wheat.

The term "wheat" as relates to federal crop insurance for the year 1945 has a limited meaning fixed by law. As so defined no crop insurance was authorized to be written upon 1945 spring wheat reseeded on winter wheat acreage.

Accordingly, if you find from the evidence in this case that any of the wheat acreage upon which the plaintiffs base their claim against the defendant consisted of spring wheat acreage reseeded upon winter wheat acreage, you will, in event you find for the plaintiff in this case, exclude all of such reseeded acreage from any computation of acreage or amount made by you in your deliberations, and from your verdict.

Section 414.37 (v), 10 F. R. 1591.

Given in part as modified.

(Signed) C. J. TAYLOR, *Judge.*

164 No. 2

You are instructed that all persons are charged by law with knowledge of the regulations controlling Federal Crop insurance in 1945, and of the limitations imposed by law upon the authority of agents of the Federal crop insurance corporation to contract with respect to such crop insurance.

Accordingly, in this case, you will not, in reaching a verdict, give any force to, or be influenced by the ignorance of the plaintiffs

of any Federal regulations controlling 1945 wheat crop insurance, if you find such ignorance existed. Neither will you give force or effect to any oral understanding between the plaintiffs and any agent or agents of the defendant fixing the terms or scope of the crop insurance involved in this case, if you find any such oral understanding existed, unless you also find that such understanding was authorized in writing by a duly authorized officer or representative of the defendant corporation.

Section 414.42 10 F. R. 1592.
McFall vs. Arkoosh, 37 Ida. 243, 215 Pac. 978.
State vs. Taylor, 58 Ida. 656, 78 Pac. (2) 125.
Section 16–101 I. C. A.
Osborn vs. United States, 145 Fed. (2) 892 (9th Cir.).
Refused. Not the law applicable.

(Signed) C. J. TAYLOR, *Judge*.

No. 3

You are instructed that the Federal Regulations controlling contracts of crop insurance such as under consideration in this case contain the following provisions:

"Modification of insurance contract.—No notice to any county committee or representative of the corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the corporation; nor shall any provision or condition of the insurance contract or any forfeiture be held to be waived by any delay or omission by the corporation in exercising its rights and powers thereunder or by any requirement, act or proceeding, on the part of the corporation or of its representatives, relating to appraisal or to any examination herein provided for."

You are instructed that the regulations above quoted has the force of law and is binding upon you in reaching a verdict in this case.

Section 414.42 10 F. R. 1592.
McFall vs. Arkoosh, 37 Ida. 243, 215 Pac. 978.
State vs. Taylor, 58 Ida. 656, 78 Pac. (2) 125.
Given without the last sentence.

(Signed) C. J. TAYLOR, *Judge*.

No. 4

You are instructed that the contract of insurance in this case consists of the application for insurance, the acceptance of application for insurance, and the Federal Regulations controlling crop insurance for the year 1945.

Given.

(Signed) C. J. TAYLOR, *Judge.*

No. 5

166 You are instructed that in reaching a verdict in this case you will consider only the crop insurance upon the sixty acres of spring wheat not reseeded upon winter wheat acreage, and exclude from your verdict all consideration of the four hundred acres of spring wheat reseeded upon winter wheat acreage.

Refused. Not the law applicable.

(Signed) C. J. TAYLOR, *Judge.*

Filed March 19, 1946.

167 [Reporter's certificate to foregoing transcript omitted in printing.]

168 In the District Court of the Ninth Judicial District of the State of Idaho, in and for the County of Bonneville

A. A. MERRILL AND N. D. MERRILL, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS.

vs.

THE FEDERAL CROP INSURANCE CORPORATION, A CORPORATION, DEFENDANT

Order sustaining general demurrer and overruling special demurrer

Jan. 11, 1946

January 11, 1946, the Plaintiff, A. A. Merrill, appeared with his attorney, Arthur W. Holden. E. H. Casterlin, attorney for the defendant was present.

Arguments were presented by Counsel on Defendant's Demurrer to the Complaint. Further arguments were presented by A. A. Merrill.

The general demurrer was sustained by the Court, the special demurrer was overruled, and the plaintiff was allowed 15 days to amend.

(Signed) C. J. TAYLOR,
District Judge.

169 In District Court of Bonneville County

Amended complaint

Comes now the above-named plaintiffs and complaining of the above named defendant, for cause of action alleges:

I

That at all the times herein mentioned, the plaintiffs, A. A. Merrill and N. D. Merrill, were and are now, copartners doing business under the firm name and style of Merrill Bros., in Bonneville County, State of Idaho.

II

That the defendant, The Federal Crop Insurance Corporation, is a corporation duly organized and existing under and by virtue of an Act of the Congress of the United States of America, for the purpose of insuring crops of wheat and other grains, and is doing a general crop insurance business in Bonneville County, Idaho, having complied with all of the laws of the State of Idaho relative to foreign corporations doing business therein.

III

That the County Agricultural Conservation Committee of Bonneville County, Idaho, is the duly authorized and acting agent of the defendant corporation.

IV

That John P. Mix is a duly appointed, qualified, and acting State Crop Insurance Supervisor for said defendant corporation and that C. N. Scoresby is a duly appointed, qualified and acting Adjuster for said defendant corporation.

V

That at all the times herein mentioned the plaintiffs were and now are the owners of the following described lands
170 and premises located in Bonneville County, Idaho, and particularly described as follows, to wit:

The southeast quarter of Section 32, and the east half of the southwest quarter of Section 32 and the north half of the northwest quarter of the southwest quarter of Section 32, and the southwest quarter of the northwest quarter of Section 32, and 100 acres of land in the northeast quarter of Section 31, and south half

of the south half of the southeast quarter of Section 29, and the south half of the southeast quarter of the southwest quarter of Section 29, all in Township 3 North, Range 36, East Boise, Meridian, Bonneville County, Idaho, containing 460 acres of land.

VI

That on the 26th day of March 1945, at Idaho Falls, Idaho, at the special instance and request of the defendant, the plaintiffs made application in writing to the defendant for wheat crop insurance covering the 1945 spring wheat crop and the 1946 and 1947 wheat crops, on plaintiffs' lands and premises above described; that according to the terms of said application, the said wheat crop was to be seeded for harvest as grain in any of the three years covered by said application and that the insured percentage of said wheat crop applied for was 50% thereof; that a note for premium was embodied in said application for wheat crop insurance granting to the plaintiffs the privilege of paying said premium note either in cash or wheat, or both.

VII

That shortly prior to and at the time plaintiffs made ap-
171 plication for said insurance, as aforesaid, they fully informed the defendant, that all of said land above described, excepting 60 acres thereof, had been planted to fall wheat in the fall of 1944 and that said wheat had completely winter killed and that all of said land above described would be planted to No. 2 soft white early Bart spring wheat in the spring of 1945; that defendant then and there represented to, informed and told said plaintiff, that all of the said wheat crop so to be planted on said above described land was eligible for insurance for the year 1945, and that defendant would insure said crop, provided same was planted to spring wheat.

VIII

That on the 26th day of March 1945, the said County Agricultural Conservation Committee recommended the acceptance of the plaintiffs' Application for said wheat crop insurance.

IX

That on the 28th day of May 1945, the said defendant corporation duly accepted the said plaintiffs' application for said wheat crop insurance, a true copy of said application for wheat crop insurance, Recommendation and Certification by the County Com-

mittee, and Acceptance by The Federal Crop Insurance Corporation, is attached hereto and made a part hereof as fully as though the same were set forth in haec verba and marked plaintiffs' "Exhibit A" and delivered a duplicate copy thereof to the plaintiffs, together with a Letter of Acceptance and Instructions, a true copy of which is attached hereto and made a part hereof as fully as though the same were set forth in haec verba and marked plaintiffs' "Exhibit A–1."

X

That plaintiffs planted during the months of March and April 1945, 460 acres of No. 2 soft white early Bart spring wheat on said plaintiffs' premises above described.

172

XI

That according to the terms of said Contract of Insurance so entered into by and between the plaintiffs and the defendant on the 28th day of May 1945, as aforesaid, the defendant insured plaintiffs' 1945 spring wheat crop located on the lands and premises above described, against loss in yield of wheat due to unavoidable causes, including drought, flood, hail, wind, frost, winter kill, lightning, fire, excessive rain, snow, wild life, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as might be determined by the Board of Directors of said corporation.

XII

That on June 28, 1945, "Contract Summary" for 1945 was prepared and filed by the defendant corporation specifying the number of acres planted by plaintiffs, the insured interest in the crop, the premium rate per acre, the premium to be paid, the average yield per acre, as set up by the defendant corporation for the locality in which the plaintiffs' premises are located and also the maximum insured production; that through inadvertence and mistake, the said defendant's "Contract Summary for 1945" incorrectly specifies the number of acres planted, in this, that there were actually planted 460 acres instead of 420 acres as specified in the said "Contract Summary for 1945"; that said "Contract Summary for 1945" is also incorrect wherein it specifies the insured production in bushels to be 3,948, that in truth and in fact, there should be 4,324 insured production bushels, and the net price at maturity should be $1.29, instead of $1.21; that a true and correct copy of said "Contract Summary for 1945" is attached hereto and

173 made a part hereof and marked plaintiffs' "Exhibit B."

XIII

That the average yield for plaintiffs' crop specified in the defendant corporation's "Contract Summary for 1945" was 18.8 bushels per acre, or a total of 8,648 bushels on plaintiffs' 460 acres of land so planted, one-half of which, to wit, 4,324, the defendant insured in case of a loss of yield due to any of said unavoidable causes and agreed to pay the plaintiffs either in wheat of the same kind, quality and test, or in cash based upon the market value of said wheat at the time of harvest; that the amount of wheat actually harvested from plaintiffs' premises above described, in the year 1945, was 1,254 bushels and the average protein test was 13.85; that the price plaintiffs received for the sale of said wheat was $1.29 per bushel, which was the market price thereof.

XIV

That said wheat crop made a good average growth up until about the middle of July 1945; that thereafter the entire crop of wheat was lost because of drought, with the exception of said 1,254 bushels of wheat which the plaintiffs were able to and did harvest.

XV

That on the 7th day of August 1945, the plaintiffs notified the defendant corporation in writing, through its agent, Bonneville County Agricultural Conservation Committee, of said loss and requested an inspection of said crop of wheat. A true and correct copy of which said notice in writing is attached hereto and made a part hereof and marked plaintiffs' "Exhibit C."

XVI

174 That thereafter and on the 21st day of September 1945, the said defendant corporation, acting by and through its duly authorized agents, John P. Mix, the State Crop Insurance Supervisor, and C. N. Scoresby, the defendant's Adjuster, did make an inspection of said crop and did then and there make out a "Report of Inspection"; a true copy of which said "Report of Inspection" is attached hereto and made a part hereof and marked "plaintiffs' Exhibit D"; that thereafter the said defendant delivered to the plaintiffs a true copy of said "Report of Inspection."

XVIII

That on the said 21st day of September 1945, the plaintiffs furnished the defendant corporation with their "Statement of Proof

of Loss" and delivered the same to C. N. Scoresby, the Adjuster of said defendant corporation; that the said C. N. Scoresby, the said Adjuster of said defendant then and there certified to plaintiffs' "Statement in Proof of Loss" that he had made a careful investigation of said claim and to the best of his knowledge and belief the facts stated therein are complete, true, and correct and the amount of loss claimed therein by the insured was determined in accordance with the Applicable Regulations and Procedures of The Federal Crop Insurance Corporation, and further certified that the signature of the plaintiffs appearing on said "Statement in Proof of Loss" had been affixed by the insured. A true and correct copy of plaintiffs' "Statement in Proof of Loss" and certification by the said C. N. Scoresby, is hereto attached and made a part hereof and marked "plaintiffs' Exhibit E." That the said defendant prepared the said plaintiffs' "Statement in Proof of Loss" and the said Certification thereof by its said Adjuster, C. N. Scoresby, and delivered a duplicate copy thereof to the said plaintiffs.

175 XVIII

That there is now justly due, owing and unpaid from the defendant to the plaintiffs the sum of $3,960.30, in cash, or in lieu thereof, 3,070 bushels of No. 2 soft white wheat, with an average protein test of 13.85, no part of which has been paid. That the plaintiffs have made demand upon the defendant for the payment of said sum, and the defendant has refused and still refuses to pay the same, or any part thereof.

XIX

That shortly prior to November 8th, 1945, the Bonneville County Agricultural Conservation Committee, notified the plaintiff that there was due, under the terms of their Contract of Insurance with the defendant for the premium earned on said Contract of Insurance, the sum of $304.92, plus $4.55 interest thereon, and notified the plaintiff to forward said sum of money direct to The Federal Crop Insurance Corporation at Denver 2, Colorado; that on the 8th day of November 1945, the said plaintiffs forwarded to the said defendant at its office in Denver, Colorado, the sum of $309.47, pursuant to said instruction, in payment of the premium earned on said Contract of Insurance, and defendant accepted the same in payment thereof.

XX

The plaintiffs' Exhibits "A," "A-1," "B," "D," and "E," attached hereto and made a part hereof, were all prepared by the said defendant, and that plaintiffs' Exhibit "A" and plaintiffs' Exhibit

"A–1" are the only instruments that were delivered to the plaintiffs by the defendant in connection with said Contract of Insurance and that said plaintiffs' Exhibits "A" and "A–1" constitute and contain the only regulations and instructions that were ever
176 delivered to the plaintiff, and the only regulations that plaintiffs had any knowledge of.

XXI

That the said plaintiffs have duly performed all of the terms and conditions of said Contract of Insurance by them to be done and performed.

Wherefore, plaintiffs pray judgment against the defendant, for the sum of $3,960.30, in cash, or in lieu thereof, 3,070 bushels of No. 2 soft white wheat, with an average ptotein test of 13.85, together with legal insterest thereon from the 21st day of September 1945, and for costs of suit.

Plaintiffs pray for general relief.

(Signed) A. A. MERRILL,
HOLDEN & HOLDEN,
Attorneys for Plaintiffs,
Residence and P. O. Address, Idaho Falls, Idaho.

(Duly verified.)
Filed January 18, 1946.

177 *Exhibit "A" to amend complaint*

Form FC1–12–X

U. S. DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

FEBRUARY 1945.

Budget Bureau No. 40–R 1204. Approval expires January 1, 1949.

PLAINTIFF'S EXHIBIT "A"

82–010–5–8.
(State and County Code and Identification Number)

Bonneville. (County) Idaho. (State)

APPLICATION FOR WHEAT CROP INSURANCE

(Pursuant to the Federal Crop Insurance Act, as amended)

A. This application covers the crop years 1945, 1946, 1947.

B. The undersigned applicant, as evidenced by his signature in Item F below, hereby applies to the Federal Crop Insurance Cor-

poration (herein called "the Corporation") for insurance to cover his interest as landlord, owner, tenant or sharecropper in the wheat crop to be seeded for harvest as grain in any of the three years covered by this application. For each year the application covers all insurance units located, or considered for crop insurance purposes to be located, in the county designated above in which the applicant has an interest at the time of seeding. The insurance shall cover loss in yield of wheat due to unavoidable causes, including drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board of Directors of the Corporation.

C. Average Yield and Premium Rate per Acre.—The
178 average yield(s) and premium rate(s) per acre for each insurance unit covered by the contract shall be those established by the Corporation for the first year of the contract and shall be on file in the office of the county association. If the insured acquires an interest in other insurance units for the second or third year of the contract, the average yield(s) and premium rate(s) for the insurance units shall be those which could have been or were established under the Wheat Crop Insurance Regulations for the first year of the contract.

D. Insured Percentage Applied for: 50%.

(Enter 50 or 75%)

E. Class of Wheat for the Payment of Premiums and Indemnities: No. 2 soft white.

It is understood and agreed that if the class of wheat to be used as the basis for the payment of premiums and indemnities is not entered above, or if the class of wheat designated by the applicant is not customarily grown in the area, the Corporation may enter or change the class of wheat. The class and grade of wheat to be used as the basis for the payment of premiums and indemnities shall be those determined by the Corporation.

F. Note for Premium.—Subject to the terms and conditions of Items A through H hereof, all made a part of this note, the undersigned applicant promises to pay to the order of the Federal Crop Insurance Corporation, on or before the applicable maturity date specified in the Wheat Crop Insurance Regulations for each crop year, the amount of premium due from him under the contract for such year, either in cash or wheat, or both, with interest after maturity on any unpaid portion thereof at the rate of one-half of one percent for each calendar month or fraction thereof,
179 except that no interest will be charged on any amount that is paid within two calendar months after maturity.

Any unpaid amount of this note (either before or after the maturity date) may be deducted from any indemnity payable under the contract, from the proceeds of any commodity loan to the

insured, and from any payment made to the insured under the Soil Conservation and Domestic Allotment Act, as amended, or any other act of Congress or program administered by the United States Department of Agriculture or the War Food Administration.

Name and Address of Applicant:

Name (Type or Print): Merrill Brothers, c-o A. A. Merrill.

Address: Earl Bulding, Idaho Falls, Idaho.

(a(MERRILL BROS.

By A. A. MERRILL. 3–26–1945.

(Signature of Applicant) (Date)

(a(LOIS RHEAD.

(Witness to Applicant's Signature)

G. Recommendation and Certification by the County Committee.—The member of the County Agricultural Conservation Committee, on behalf of such Committee, as evidenced by his signature affixed in such capacity below, recommends acceptance of the application and certifies that, to the best of his knowledge and belief, the application has been submitted in accordance with the provisions of the applicable Wheat Crop Insurance Regulations and any amendments thereto, and that, if the signature of the applicant in Item F has ben affixed by a person who signed as fiduciary or agent such person had authority to act in such capacity.

180 3–26–1945.

(Date)

(a(J. E. Thule.

(Signature of County Committeeman)

H. Acceptance by the Federal Crop Insurance Corporation.—It is understood and agreed that upon acceptance of the application by a duly authorized representative of the Corporation as evidenced by his approval below, the insurance contract shall be in effect, provided the application has been submitted in accordance with the provisions of the application and the applicable Wheat Crop Insurance Regulations. It is further understood and agreed that the accepted application and the applicable Wheat Crop Insurance Regulations, including any amendments thereto, constitute the contract between the Corporation and the insured.

----------, 194--

(Date)

THE FEDERAL CROP INSURANCE CORPORATION,

By C. B. HOLMES, 5–28–45, Denver, Colo.

(Authorized Representative)

(Note: All checks, bank drafts, and money orders in payment of crop insurance premiums or indebtedness shall be made payable to the Treasurer of the United States. Payments in cash shall be made only at the office of the county association.)

APPLICANT'S COPY

181 *Exhibit "A-1" to amended complaint*

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Denver Branch Office

DEAR SIR: The Federal Crop Insurance Corporation has accepted your application for insurance for your 1945 spring crop and your 1946 and 1947 wheat crops.

The insurance contract consists of the accepted application and the wheat Crop Insurance Regulations, copies of which are inclosed. We suggest that you carefully read the provisions of your contract. However, we would like to call your particular attention to some of your responsibilities under the contract.

Report of Acreage

As soon as possible after the wheat crop is seeded, submit to your county AAA committee, on a form which will be provided by the county AAA office, a report showing the spring wheat acreage seeded and the percent interest you have in the crop.

Damage to or Loss of Crop

If you fail to get a stand, or if your wheat crop is damaged and it is not too late to reseed wheat, you are required under the terms of the contract to reseed unless you put the land to another use before it is too late to reseed. Any acreage of wheat put to another use before it is too late to reseed to wheat will not be covered by insurance. If, after it is too late to reseed to wheat, the crop is damaged to the extent that a loss under the contract is probable, notify your county committee immediately in writing. If any wheat acreage is totally or substantially destroyed after it is too late to reseed to wheat, notify your county committee, request

182 an inspection, and wait until it is inspected and released by a representative of the Corporation before putting the acreage to another use. If, after you have completed harvest, you find that you have not produced your insured production, notify your county committee immediately.

Transfer of All or Part of Crop

If all or any part of your wheat crop is transferred to another person, notify your county committee immediately in writing.

Even though you transfer all or a part of your wheat crop to another person, you will be responsible for the payment of the entire premium.

Premium

Your crop insurance premium should be paid immediately at your county AAA office when you are notified it is due. Interest charges will accrue at the rate of one-half of one percent per month or portion thereof, beginning at the maturity date of your premium, on any amount not paid within two calendar months after maturity.

Notice to Tenant

If you are a landlord, you should advise your tenant that your wheat crop is insured so that he will not unknowingly violate any of the provisions of the contract.

Federal Crop Insurance provides farmers the opportunity to join hands for protection against crop losses. A successful crop insurance program will provide a great force for relieving economic distress when crop losses occur.

Very truly yours,

C. B. HOLMES, *Branch Manager.*

183 *Exhibit "B" to Amended Complaint*

Form FCI-22.

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

PLAINTIFFS' EXHIBIT "B"

CONTRACT SUMMARY FOR 1945

A. Merrill Bros.
B. Earl Building, Idaho Falls, Idaho.
C. 82-010-5-8.
D. Spring Wheat.
E. Coverage: 50%.
F. Cottonseed Insured? ————.
Remarks: ----------

Part 1. Date for Insurance Contract

Farm serial number	Acreage		Insured interest in crop	Practice	Relationship to farm	Premium computation		Average yield per acre	Maximum insured production
	Insured	Uninsurable				Premium rate per acre	Premium (2 x 4 x 7)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
17C-20	0.0	0.0							
17C-35	0.0	0.0							
17C-36	0.0	0.0							
17C-37	120.0	0.0	100%	NI	0	0.6	72.0	18.8	2,256
126B	0.0	0.0							
135C-3	0.0	0.0							
136C	90.0	0.0	100%	NI	0	.6	54.0	18.8	1,692
144C1	210.0	0.0	100%	NI	0	.6	126.0	18.8	3,948
161E	0.0	0.0							
184 G. Total							252.0	xxxxx	xxxxx
H. Premium for cottonseed								xxxxx	xxxxx
I. Premium Reduction								xxxxx	xxxxx
J. Premium for Contract							252.0	xxxxx	xxxxx

I certify that, to the best of my knowledge and belief, the above data are true and correct and represent all the farms in the county in which the insured had an interest in the above-identified crop at the beginning of planting or time of seeding.

---------- (Signature of Committee Representative)

June 28, 1945.

185 *Part II. Determination of Premium Due in Case*

(For Branch Office Use)

Premium for contract (Item J, Part I)	2.52
Credits prior to maturity	0
Net premium due at maturity	252
Net price at maturity	$ 1.21
Premium Due in Cash	$304.72

INSURED'S COPY

186 *Exhibit "C" to amended complaint*

AUGUST 7, 1945.

CHAIRMAN BONNEVILLE COUNTY A. C. A.,
Idaho Falls, Idaho.

MY DEAR MR. WARD: Because of drowth [sic], we are going to experience a rather drastic loss on our dry farm this season.

We have approximately 100 acres that we will not be able to cut at all and approximately 300 acres wherein the yield will be very, very light. The balance of the grain is fairly good. Would you please be so kind as to have your investigator, Mr. Scoresby, make an investigation of our crop?

I might suggest that it might be well if he would do this before harvest and then we will produce all receipts from the grain actually harvested, so that you will have a complete record and know exactly what the crop did.

I will be glad to accompany Mr. Scoresby to the ranch at any time and give him any possible assistance.

Very truly yours,

MERRILL BROS.
By A. A. MERRILL.

AAM:H

187 *Exhibit "D" to amended complaint*

Form FCI–563.
Budget Bureau No. 40–R238. Approval Expires June 30, 1946.

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

PLAINTIFFS' EXHIBIT "D"

REPORT OF INSPECTION

Wheat.
(Enter either Wheat or Flax)

82–010–5–8
(State and County Code and Identification Number)

17C37, 136C, 144C–1
(Farm Serial Number)

Part I. Acreage Inspection

Field or tract identification	Acreage in field of tract	Cause of damage and condition of crop
17C–37	120.0	Drought.
136C	90.0	Drought.
144C–1	250.0	Drought.

Part II. Acreage Release

The acreage stated below is hereby released subject to the appraisal of the yield per acre indicated and subject to the intended use of the acreage or crop shown below; provided, however, that such appraisal is in accordance with the terms and conditions of the applicable crop insurance contract:

Field or tract identification	Acreage released	Appraised yield per acre	Intended use

188 September 21, 1945.
(Date)

C. N. SCORESBY.
(Signature of Adjuster)

Part III. Adjuster's Narrative Report

Include the approximate date of damage, any cause of damage not stated above and all other information necessary in making final settlement with the insured, if a loss is claimed. (If additional space is needed, use reverse side.)

I inspected this in company with John P. Mix, State Crop Insurance Supervisor. We found the grain had been seeded on new land the first year out of sagebrush. It was a good stand of wheat, damaged very materially from lack of moisture. In fact, only portion of farm would pay for harvest.

INSURED'S COPY

189 *Exhibit "E" to amended complaint*

Form FCI 567.

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Wheat. (Name of Crop)

82–010–5–8. (State and County Code and Identification Number)

PLAINTIFFS' EXHIBIT "E"

STATEMENT IN PROOF OF LOSS

17C–37, 136C, 144C–1. (Farm Serial Number)

Merrill Bros., c–o A. A. Merrill, Earl Building, Idaho Falls, Idaho.

Reported acreage	Measured acreage	Average yield	Insured percentage	Insured interest in crop
A. 420	B. 460	C. 18.8	D. 50%	E. 100%.

(See Reverse Side for Explanation.)

Part I. Actual Production for the Farm

Item	Acres	Bushels
1. Acreage threshed and total production therefrom	275	1,264
2. Appraised production not threshed but otherwise harvested		0
3. Total Actual Production for the Farm	XXXX	1,264

Part II. Adjustments to Production for the Farm

4. Appraised production for released acreage needed to a substitute crop		
5. Appraised production for any acreage not harvested		
190 6. Appraised production for any acreage put to another use without the consent of the Corporation		
7. Appraised production for any acreage needed for harvest as grain but cut for hay		
8. Appraised production for any acreage for cause(s) not insured against		
9.		
10.		
11. Total adjustments to production	xxxx	
12. Total seeded acreage and total production	480	1,284
13. Production adjusted to insured acreage (Adjustment factor)	xxxx	

Part III. Basis for Settlement

	Bushels
14. Insured production (the smaller of A or B times E)	3,948
15. Insured's interest in production (production in items 12 or 13, whichever is applicable, times E)	1,254
16. Amount of loss claimed (item 14 minus item 15)	2,694

Part IV. Causes of Damage

	Cause of damage	Estimated percent contribution	Approximate date of damage
17. Primary	Drought	100 percent	July-August.
18. Secondary			
19. Other contributing			

Form FCI 567 Continued.

20. The information and date set out in Parts I, II, III,
191 and IV of this statement are true and correct and the insured interest in the crop as shown, represents such interest at the time of loss and not in excess of the interest reported by the insured as his interest in the crop at the time of seeding and are the basis for the amount of loss claimed in item 16. The furnishing or preparation of any forms, the inspection of the farm, or investigation of loss by an adjuster was done at the request of the insured and shall not constitute a waiver of any right of the Corporation. In consideration of the payment of this claim, I hereby release the Corporation from all claims for indemnity, damages, or causes of action in connection with the crop and on the farm indicated above which I may have arising under the contract under which indemnity is claimed. In consideration of the settlement of the indemnity, I hereby sell, assign and transfer to the Federal Crop Insurance Corporation, to the extent of the value of the commodity represented by such settlement all claims, demands, and causes of action which I may have against any and all

persons as a result of the partial or total destruction of the insured crop. I hereby irrevocably constitute and appoint the Federal Crop Insurance Corporation my true and lawful attorney, with full powers of substitution and revocation for me and in my name, or otherwise, but for its own sole use, to take all proceedings and execute any and all instruments fully to effectuate this assignment and give acquittance for all such claims, demands, and causes of action.

Is there an outstanding collateral assignment? No.

September 21, 1945.

MERRILL BROS.
By A. A. MERRILL.

192 Any misrepresentation of fact made in this instrument will subject the maker thereof to the provisions of the United States Criminal Code and the penal provisions of the Federal Crop Insurance Act, as amended.

21. In connection with this Statement in Proof of Loss, I certify that:

I have made a careful investigation of this claim and, to the best of my knowledge and belief, the facts stated herein are complete, true, and correct; the amount of loss claimed herein by the insured was determined in accordance with the applicable regulations and procedures of the Federal Crop Insurance Corporation; and the signature appearing in item 20, above, has been affixed by the insured who had the stated interest in the above-indicated crop at the time of loss and whose name appears above, or if the signature has been affixed by a person who signs as fiduciary or agent such person had authority to act in such capacity.

September 21, 1945.

C. N. SCORESBY.
(Signature of Adjuster)

22. I recommend approval of this Statement in Proof of Loss.

------ ----, 194-- ----------
(Date) (State Director or his Representative)

APPLICANT'S COPY

Filed January 18, 1946.

193 In District Court of Bonneville County

Demurrer to amended complaint

Comes now the above-named defendant and demurs to plaintiffs' amended complaint on the following grounds:

I

That said complaint does not state facts sufficient to constitute a cause of action.

II

That said complaint is ambiguous in the following respects:

(a) It is alle'ed in Paragraph VI that the plaintiffs made application for "wheat crop insurance covering the 1945 spring wheat crop." and the pleaded application which was finally accepted does not cover "spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year."

(b) It is alleged in Paragraph VII that the plaintiffs informed the defendant that all of the land described in the amended cooplaint excepting sixty acres thereof had been planted to fall wheat in the fall of 1944, and that said wheat had completely winterkilled, and that all of said land described in the amended complaint would be planted to No. 2 soft white early Bart spring wheat in the spring of 1945, and there is no allegation of an ultimate fact following this forecast.

(c) In paragraph VIII, it is alleged that the committee recommended the acceptance of the application "for said wheat crop insurance." Presumably, the insurance for the wheat crop previously uncertainly described and the pleaded application exempt spring wheat which has been reseeded on
194 winter wheat acreage in the 1945 crop year.

(d) In Paragraph XI, it is alleged that "the defendant insured plaintiffs 1945 spring wheat crop" and the pleaded contract of insurance does not insure spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year.

III

That said amended complaint is unintelligible in the respects stated in Paragraph II hereinabove.

IV

That said amended complaint is uncertain in respects stated in Paragraph II hereinabove.

(Signed) John A. Carver,
JOHN A. CARVER,
United States Attorney for the District of Idaho.
E. H. CASTERLIN,
Assistant U. S. Attorney for the District of Idaho.

In support of the foregoing demurrer, the defendant submits the following points and authorities:

A complaint must state the facts constituting the cause of action in ordinary and concise language.

Clark's Idaho Digest, Pleadings, Sec. 27.

Tsuboi v. Cohn, 40 Ida. 102; 231 Pac. 708.

In a pleading, the facts should be alleged as distinguished from conclusions.

Hurt v. Brandt, 37 Ida. 186; 215 Pac. 842.

Plaintiff must allege ultimate facts essential to entitle him to recover; otherwise, the complaint is demurrable.

195 Stanger v. Hunter, 49 Ida. 723; 291 Pac. 1060.

Wheat crop insurance Regulations, Pt 414, 10 F. R. 1585.

7 U. S. S. 1506 (e).

44 U. S. C. 307.

Filed January 26, 1946.

196 In District Court of Bonneville County

Minute entry overruling demurrer

Feb. 1, 1946

February 1, 1946. The plaintiff appeared by counsel, Mr. Arthur W. Holden. The defendant by telegram submitted the demurrer on argument and authorities presented upon the demurrer to the original complaint.

After consideration of the matter, the court ordered that the demurrer be overruled and the defendant allowed 10 days to answer.

(Signed) C. J. TAYLOR,
District Judge.

197 In District Court of Bonneville County

Order overruling general and special demurrer

Feb. 1, 1946

The defendant's demurrer both general and special, having been argued this first day of February 1946, before the above entitled Court, and the Court being fully advised in the premises:

Now, therefore, it is hereby ordered, that said demurrer both general and special, be, and the same is hereby overruled, and the defendant is given 10 days from date hereof in which to answer.

Dated this 1st day of February 1946.

(Signed) C. J. TAYLOR,
District Judge.

Filed February 4, 1946.

198 In District Court of Bonneville County

Motion to strike

On the ground that the same is impertinent, sham, irrevelant, and immaterial, the defendant moves to strike from plaintiffs' amended complaint all of the following:

I

All pleading with respect to spring wheat in the 1945 crop year excepting that planted on sixty acres of the lands described in Paragraph V of the Amended Complaint and which is not more definitely described or identified in the said amended Complaint.

II

All of Paragraph VII of the Amended Complaint.

III

From Paragraph XI, the words "the defendant insured plaintiffs' 1945 spring wheat crop."

IV

From Paragraph XII, all of that part beginning with the words, "that through inadvertence and" in line 7 through, to and including the words "instead of $1.21;" in line 15 of said paragraph.

V

From Paragraph XIII, the following words: "or a total of 8,648 bushels on plaintiffs' 460 acres of land so planted, one-half of which, to wit, 4,324, the defendant insured" and the following words: "that the amount of wheat actually harvested from plaintiffs' premises above described, in the year 1945, was 1,254
199 bushels and the average protein test was 13.85; that the price plaintiffs received for the sale of said wheat was $1.29 per bushel, which was the market price thereof."

VI

"From Paragraph XVII, the following words: "That the said defendant prepared the said plaintiffs' 'Statement in Proof of Loss' and the said Certification thereof by its said Adjuster, C. N. Scoresby, and delivered a duplicate copy thereof to the said plaintiffs."

VII

From Paragraph XX, the following words: "That plaintiffs' Exhibits "A," "A-1," "B," "D," and "E," attached hereto and made a part hereof, were all prepared by the sand defendand, and" and "and the only regulations that plaintiffs had any knowledge of."

(Signed) John A. Carver,
JOHN A. CARVER,
United States Attorney for the District of Idaho.
E. H. Casterlin,
E. H. CASTERLIN,
Assistant U. S. Attorney for the District of Idaho.

Filed February 8, 1946.

200 In District Court of Bonneville County

Order denying defendant's motion to strike

Feb. 15, 1946

The defendant's Motion to Strike came on for hearing and argument the 15th day of February 1946; both the plaintiffs and defendant were represented by counsel.

The said Motion to Strike was argued by respective counsel and the Court being fully advised in the premises:

Nor, therefore, it is hereby ordered, and this does order, that the defendant's Motion to Strike, and the whole thereof be and the same is hereby denied, and Defendant allowed 10 days to answer.

Dated this 15th day of February A. D. 1946.

(Signed) C. J. TAYLOR,
District Judge.

Filed, February 15, 1946.

201 In District Court of Bonneville County

Minute entry on motion to strike

Feb. 15, 1946

February 15, 1946 this cause came on for a hearing on a motion to strike. E. H. Casterlin, Attorney for the Defendant Corporation appeared and presented affirmative arguments. Plaintiff A. A. Merrill, appeared with Attorney Arthur W. Holden. Plaintiff's Attorney presented arguments resisting the Motion to Strike. A demurrer had previously been submitted without argument and overruled.

The Defendant's Motion to Strike was denied and 10 days were allowed to answer.

(Signed) C. J. TAYLOR,
District Judge.

202 In District Court of Bonneville County

Answer to amended complaint

Filed Feb. 28, 1946

Comes now the above-named defendant and, answering plaintiffs' Amended Complaint, admits, denies, and alleges:

I

Admits each and every allegation of Paragraph I.

II

Answering Paragraph II, denies that the defendant is doing a general crop insurance business in Bonneville County, Idaho; denies that it is a foreign corporation required to comply with the laws of the State of Idaho; otherwise, admits all other allegations in said Paragraph II; and alleges that the defendant is a body corporate created as an agency of and within the United States Department of Agriculture, a branch of the United States Government, pursuant to the provisions of the Federal Crop Insurance Act (7 U. S. C. 1501–1510).

III

Admits each and every allegation of Paragraph III.

IV

Admits each and every allegation of Paragraph IV.

V

Answering Paragraph V, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and on that ground, denies each and every allegation of Paragraph V. Defendant admits, for the purpose of this action, that plaintiffs are the owners of the farms designated under the crop insurance program by Serials Nos. 17C–20, 17C–35, 17C–36, 17C–37, 126B, 135C–3, 136C, 144C, and 161E.

203

VI

Answering Paragraph VI, defendant denies that plaintiffs made their application for insurance at the special instance and request of the defendant, and denies that the plaintiff made application for wheat crop insurance covering the 1945 spring wheat crop; and, in this connection, alleges that the plaintiffs made application in writing to the defendant for crop insurance on the 1945 crop of spring wheat in Bonneville County, Idaho, in accordance with Part 414 of the Wheat Crop Insurance Regulations issued pursuant to the Act (10 F. R. 1585; Amdt. 1, 10 F. R. 10343; Amdt. 2, 10 F. R. 14135), all of which are a part of the written application—which regulations exclude from insurance "spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year"; otherwise, admits the allegations of said Paragraph VI.

VII

Answering Paragraph VII, the defendant denies that at any time or place the plaintiffs fully informed the defendant, or informed the defendant at all, that all of the land mentioned in the amended complaint, excepting sixty acres thereof, or any number of acres, had been planted to fall wheat in the fall of 1944 and that said wheat had completely winter killed; denies that the defendant at any time or place reported to, informed, and/or told said plaintiffs, or either of them, that all of said wheat crop planted on the said lands was eligible for insurance for the year 1945 and that defendant would insure said crop, provided the same was planted to spring wheat, contrary or in contradiction to the written application which contained the above mentioned regulations by adoption and express reference thereto; admits that the plaintiffs stated

204 that all of said land described in the amended complaint would be planted to No. 2 soft white early Bart spring wheat in the spring of 1945; alleges that at the time of the acceptance of the said application for insurance, the defendant had no knowledge or information whatever that the said wheat lands, or any part thereof, had been seeded to wheat in the fall of 1944 for the crop year 1945; denies that any part of said lands had not been reseeded on winter wheat acreage in the 1945 crop year; alleges that all of the lands seeded to wheat in the spring of 1945 was reseeded on winter wheat acreage in the 1945 crop year and not insured by the defendant.

VIII

Admits the allegations of Paragraph VIII and alleges that the acceptance of the application was unconditional and according to the terms and conditions specifically therein contained.

IX

Answering Paragraph IX, admits the allegations therein contained.

X

Answering Paragraph X, the defendant admits the allegations therein contained, except that it is denied that plaintiffs seeded a spring wheat crop on their farms in 1945 within the meaning of the Federal Crop Insurance Act, the regulations above mentioned issued pursuant thereto, and the terms of the said application for insurance.

XI

Answering Paragraph XI, denies that the defendant insured plaintiffs 1945 spring wheat crop except according to the terms and conditions of the application for insurance, the Federal Crop Insurance Act, and the regulations issued pursuant thereto;
205 otherwise admits the allegations of said Paragraph XI.

XII

Answering Paragraph XII, defendant denies that through inadvertence and mistake, the said defendants "Contract Summary for 1945" incorrectly specified the number of acres planted as alleged in said Paragraph XII, or at all, and denies that said "Contract Summary for 1945" is incorrect as alleged in said Paragraph XII, or at all, and denies that a true and correct copy of said "Contract Summary for 1945" is attached to plaintiffs amended complaint as Exhibit B; admits remaining allegations of said Paragraph XII; and in this connection, alleges that said "Contract Summary for 1945" dated June 28, 1945, was executed from information furnished by the plaintiffs, and prior to the time when defendant learned that plaintiffs did not seed spring wheat on their farms in 1945 within the meaning of the crop insurance act, regulations issued pursuant thereto, and the application for insurance; defendant alleges that the figures entered in Column 10 of said form dated June 28, 1945, were incorrectly computed, and that corrected form "Contract Summary for 1945" dated July 10, 1945, was executed with respect to plaintiffs farms showing a maximum insured production of 3,948 bushels and that a copy thereof was mailed to the plaintiffs.

XIII

Answering Paragraph XIII, defendant denies each and every allegation thereof, except as otherwise alleged and admitted and,

in this connection, admits that the average yield of wheat for plaintiffs' farms was established at 18.8 bushels per acre; admits that 1,254 bushels of wheat were produced on plaintiffs' farms in 1945, but denies that said production was from a wheat crop
206 within the meaning of the crop insurance act, the regulations issued pursuant thereto, and the application for insurance.

XIV

Answering Paragraph XIV, admits each and every allegation therein contained except that it is denied that any of said wheat crop was insured by the defendant, and denies that plaintiffs seeded a crop of spring wheat on said farms in 1945 within the meaning of the Federal Crop Insurance Act, the regulations issued pursuant thereto, and the application for insurance.

XV

Admits the allegations of Paragraph XV except that it is denied that said wheat crop was insured by the defendant.

XVI

Admits each and every allegation of Paragraph XVI.

XVII

Admits each and every allegation of Paragraph XVII except that it is denied that plaintiffs' Exhibit E is a true and correct copy of said "Statement in Proof of Loss" and denies that the defendant prepared the said plaintiffs' "Statement and Proof of Loss" and the said certification thereof by its said adjuster, C. N. Scoresby, or any other person, and delivered a duplicate copy thereof to the plaintiffs; and alleges that the plaintiffs failed to execute Proof of Loss Statement for each insurance unit on which a loss is claimed.

XVIII

Denies each and every allegation of Paragraph XVIII except that it is admitted that the plaintiffs have made demand upon the defendant for the payment of the sum of money therein ex-
207 pressed and that the defendant has refused and still refuses to pay the same, or any part thereof.

XIX

Answering Paragraph XIX, the defendant denies each and every allegation therein contained except that it is alleged that

the said county committee refused to accept the premium payment and further alleges that no premium was due from the plaintiffs to the defendant for the 1945 crop year for the reason that the plaintiffs did not plant a wheat crop in 1945 within the meaning of the crop insurance act, the regulations issued pursuant thereto and the application for insurance, and denies that any premium whatsoever for the year 1945 crop was earned pursuant to the terms of said contract of insurance.

XX

Answering Paragraph XX, denies each and every allegation therein contained.

XXI

Answering Paragraph XXI, defendant denies each and every allegation thereof.

Wherefore, defendant prays that plaintiffs take nothing by their amended complaint and that the said defendant go hence without day and its costs.

(Signed) John A. Carver,
JOHN A. CARVER,
United States Attorney for the District of Idaho.
E. H. Casterlin,
E. H. CASTERLIN,
Assistant U. S. Attorney for the District of Idaho.

(Duly verified.)
Filed February 28, 1946.

208 In District Court of Bonneville County

Order setting cause for trial.

This cause being at issue, and ready for trial, it is ordered that the same be, and is hereby set for trial before the Court and Jury, at Idaho Falls, in Bonneville County, State of Idaho, on Monday, March 18, 1946, at the hour of ten o'clock A. M.

Dated this 6th day of March 1946.

(Signed) C. J. TAYLOR,
District Judge.

Filed March 6, 1946.

209 In District Court of Bonneville County

Minute entries of trial

March 18, 1946 Court convened at 10:00 A. M. for the trial of this cause. The plaintiffs, Merrill Bros., A. A. Merrill, and N. D.

Merrill, were present with their Attorney, Arthur W. Holden. E. H. Casterlin appeared as attorney for the defendant and made a motion that the name of Ariel L. Crowley be entered as associate counsel for the defense and it was so ordered. All officers of the court and all jurors were present. The juror, Charles N. Groom, asked to be excused and his request was granted by the Court.

W. A. Montague, E. A. Wackerli, Lon Hicks, J. M. White, J. L. McClaskey, Jos. P. Bischoff, Robt. Milligan, Victor Jensen, Kenneth Walker, S. R. Rostad, Harry Changnon, John W. Henry.

The jurors were questioned by the court as to general qualifications to serve in this cause, and all were found qualified.

Plaintiffs' attorney examined the jurors and passed for cause. Defense attorney, Ariel Crowley, examined the jurors and passed for cause.

1st peremptory for the plaintiff: E. A. Wackerli was excused, and Fred Treasure was drawn, examined by the court as to general qualifications and examined and passed for cause by attorneys for plaintiff and defendant.

1st peremptory for the defendant: W. A. Montague was excused and Walter O. Johnson was drawn, examined by
210 the court as to general qualifications, and examined and passed for cause by attorneys for plaintiff and defendant.

2nd peremptory for the plaintiff: Victor Jensen was excused and Floyd Heyrend was drawn, examined by the court as to general qualifications and examined and passed for cause by attorneys for plaintiff and defendant.

2nd peremptory for the defendant: Floyd Heyrend was excused and Howard Tippetts was drawn, examined by the court as to general qualifications, and examined and passed for cause by attorneys for the plaintiff and defendant.

3rd peremptory for the plaintiff: Waived.

3rd peremptory for the defendant: Waived.

The following-named jurors were sworn to well and truly try the cause now pending and a true verdict render according to the law and the evidence, to wit: Walter O. Johnson, Fred Treasure, Lon Hicks, J. M. White, J. L. McClaskey, Jos. P. Bischoff, Robt. Milligan, Howard Tippetts, Kenneth Walker, S. R. Rostad, Harry Changnon, John W. Henry.

All other jurors not serving in this case were excused for the term.

Plaintiffs' attorney made an opening statement to the jury.

A. A. Merrill, one of the plaintiffs, was called as the first witness, duly sworn and examined.

The jury was admonished by the court and a recess was taken from 12:00 noon to 1:30.

211 Plaintiffs' attorney requested permission to withdraw the witness, A. A. Merrill, and call two other witnesses at this time and the request was granted.

Adrian A. Merrill, Jr., was called to testify, duly sworn, examined, and cross-examined.

M. W. Smith, Midland Elevator Manager, was called as the next witness, duly sworn, and examined but not cross-examined.

Mr. A. A. Merrill was recalled as a witness and the direct examination continued.

The jury was admonished by the court and a recess was taken at 2:40 until 2:50.

Court reconvened and witness A. A. Merrill was cross-examined.

Court recessed at 3:45 for a few minutes and the jury was readmonished.

J. E. Wheeler was called as the next witness, duly sworn and examined.

J. R. Sayer was called as a witness, duly sworn and examined.

The jury was admonished by the court and a recess taken at 5:00 P. M.

At 10:00 A. M. March 19, 1946, court reconvened for a continuation of the trial of this cause. The court, all jurors, and all officers were present.

Mr. A. A. Merrill was recalled to the witness stand to further identify an exhibit. Defendant's attorney admitted the exhibit to be a true copy of the original proof of loss and the witness was excused without further examination.

Mr. L. J. Ward, the chairman of the Bonneville County committee was called as the next witness, duly sworn, examined,
212 and cross-examined.

The plaintiff rested.

Defense counsel requested that the jury be excused while a motion was presented. The request was granted by the court and the jury excused with the admonitions heretofore given.

The defendant, Federal Crop Insurance Corporation, moved for nonsuit and dismissal of the action. The motion was argued by counsel for both parties and denied by the court.

The jury was recalled.

John P. Mix, State Director of the Federal Crop Insurance Corporation, was called as a witness for the defense, duly sworn, and examined, but not cross-examined.

The defendant rested.

The plaintiff requested a few minutes recess. The court admonished the jury and ordered a few minutes recess at 10:58.

The jury was recalled at 11:20 and the plaintiffs presented their evidence in rebuttal. Mr. A. A. Merrill was recalled for further testimony. Plaintiff rested.

There was no sur-rebuttal. The jurors were admonished and excused until 1:30. The defendant moved the court to direct a verdict for the defendant on the grounds heretofore stated and to renew the motion for nonsuit.

The motion was denied and the court ordered a recess at 11:25 to 1:30.

Court reconvened and plaintiffs' attorney, Arthur W. Holden, made the opening argument to the jury. Mr. E. H. Casterlin presented arguments on behalf of the defendant to the jury.

213 At 3:45 the court ordered a few minutes recess and readmonished the jury. On reconvening, argument in rebuttal was presented by plaintiff's attorney, Arthur W. Holden. Instructions of the court were read to the jury. The Bailiff was duly sworn and the jury retired in charge of the Bailiff at 5:00 P. M.

At 8:45 P. M. the jury returned into open court. A roll call showed all jurors present. Being asked by the court the jurors stated that they had arrived at a verdict. Under direction of the court, their Foreman, Lon F. Hix, read the verdict of the jury as follows:

"In the District Court of the Ninth Judicial District of the State of Idaho, in and for the County of Bonneville

"A. A. MERRILL AND N. D. MERRILL, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS., PLAINTIFFS

vs.

THE FEDERAL CROP INSURANCE CORPORATION, A CORPORATION, DEFENDANT

"We, the jury, duly impaneled and sworn to try the above-entitled cause, find for the plaintiffs, and against the defendant, in the sum of $3,960.30.

"Dated this 19th day of March 1946.

"LON F. HICKS, *Foreman.*"

The court then asked the jury if that was their verdict to which they and each of them answered "Yes."

214 The jury was then discharged by the court for the term.

(Signed) C. J. TAYLOR,
District Judge.

215 In District Court of Bonneville County

Verdict of the jury

March 19, 1946

We, the jury, duly impaneled and sworn to try the above-entitled cause, find for the plaintiffs, and against the defendant, in the sum of $3,960.30.

Dated this 19th day of March 1946.

(Signed) LON F. HICKS, *Foreman.*

Filed, March 19, 1946.

216 In the District Court of Bonneville County

Judgment on verdict

March 20, 1946

This cause came on regularly for trial on the 18th and 19th days of March 1946. The plaintiffs appeared by their counsel, Holden and Holden and A. A. Merrill, of Idaho Falls, Idaho, and the defendant appeared by its counsel, John A. Carver, E. H. Casterlin, and Ariel L. Crowley, of Boise, Idaho. A jury of twelve men were regularly empanelled and sworn to try the above entitled cause.

Witnesses on the part of the plaintiffs and defendant were sworn and examined. After hearing the evidence, the argument of counsel and the instructions of the court, the jury returned to consider their verdict and subsequently returned to open court, and being called, answered to their names and acknowledged that they had reached a verdict for the plaintiff in the sum of $3,960.30 damages as the result of the loss of plaintiffs' wheat crop under the terms of the Insurance Policy in question.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that the plaintiffs have and recover of and from the said defendant the sum of $3,960.30 with interest thereon from and after March 19th, 1946, at the rate of six percent per annum, together with plaintiffs' costs and disbursements incurred in this action, amounting to the sum of $48.10, making a total of this judgment $4,008.40.

Dated this 20th day of March 1946.

(Signed) W. L. BREWRINK,
Clerk of the above entitled Court.

Filed March 20, 1946.

217 In District Court of Bonneville County

Notice of appeal

June 12, 1946

To the Clerk of the above entitled Court, to the Plaintiffs, A. A. Merill and N. D. Merrill, copartners, doing business under the firm name and style of Merrill Bros., and to Holden and Holden and A. A. Merrill, their attorneys:

You and each of you will please take notice that the above-named defendant hereby appeals to the Supreme Court of the State of Idaho from the whole of that judgment on verdict rendered and entered March 20th, 1946; in the above-entitled court and in the above entitled cause.

Dated this 12th day of June 1946.

(Signed) John A. Carver,
JOHN A. CARVER,
United States Attorney for the District of Idaho,
E. H. Casterlin,
E. H. CASTERLIN,
Assistant U. S. Attorney for the District of Idaho,
Attorneys for Defendant.

Filed June 13, 1946.

218 In District Court of Bonneville County

Undertaking on appeal

Whereas, the defendant desires to give an undertaking for costs on appeal as provided to be given in Section 11-203 of the Idaho Code, Annotated, 1932.

Now, therefore, the undersigned Surety, the Hartford Accident and Indemnity Company, a surety company authorized to act as Surety on bonds and undertakings in the State of Idaho, does hereby obligate itself to said plaintiffs, under such statutory obligations in the sum of Three hundred and no 100 ($300.00) Dollars.

Dated this 10th day of June 1946.

HARTFORD ACCIDENT AND INDEMNITY COMPANY.
By (Signed) FRANK J. KESTER, *Attorney-in-fact.*
Countersigned:
[CORPORATE SEAL] By (Signed) FRANK J. KESTER,
Agent at Boise, Idaho.

Filed June 13, 1946.

219 In District Court of Bonneville County

Praecipe for record

To the Clerk of the above entitled court:

Please prepare a transcript of the following papers in the above-entitled action for transmission to the Supreme Court of the State of Idaho on appeal in this action:

1. Amended Complaint.
2. Demurrer to Amended Complaint.
3. Order overruling said demurrer.
4. Motion to strike from Amended Complaint
5. Order Denying said motion.
6. Answer to Amended Complaint.
7. Instructions to the jury.
8. Verdict.
9. Judgment on verdict.
10. This Praecipe.
11. Notice of Appeal.
12. Admission of proof of service of said notice.
13. Undertaking on Appeal.
14. Order for reporter's transcript and all extensions,
15. All written stipulations concerning record on Appeal, if any.
16. All original exhibits to be certified to the Supreme Court.
17. Reporter's transcript.
18. Acceptance of service of respondent's copy of reporter's transcript.
19. Acknowledgment of service of completed transcript.
20. All Clerk's minutes.

220 Dated this 12th day of June 1946.

(Signed) John A. Carver,
JOHN A. CARVER,
United States Attorney for the District of Idaho,
E. H. Casterlin,
E. H. CASTERLIN,
Assistant U. S. Attorney for the District of Idaho,
Attorneys for Defendant.

Filed June 13, 1946.

221 In District Court of Bonneville County

Motion for and order for transcript

The defendant, having appealed to the Supreme Court of the State of Idaho from that certain judgment on verdict made and

entered on March 20, 1946, in the above-entitled action, in favor of the plaintiffs and against the defendant, now moves for an order directing the official court reporter to prepare and certify the necessary reporter's transcript of proceedings on the trial of this cause.

(Signed) John A. Carver,
JOHN A. CARVER,
United States Attorney for the District of Idaho.

E. H. CASTERLIN,
Assistant U. S. Attorney for the District of Idaho.

Filed June 17, 1946.

222 *Order for transcript*

On application of attorneys for the defendant, it is by the court ordered, That Leslie E. Poole, who is and was the official court reporter of the Ninth Judicial District and who is and was the official court reporter in this case, prepare and lodge with the District Court of the Ninth Judicial District of the State of Idaho in and for the County of Bonneville a correct, complete, and perfect copy of the reporter's transcript of all of the proceedings and evidence, together with the objections and exceptions thereto and the rulings of the court thereon, and motions made during the course of the trial and rulings of the court thereon, within thirty days from the date of this order.

Done and dated at Idaho Falls, Idaho, on this 17th day of June 1946.

(Signed) C. J. TAYLOR,
District Judge.

Service of the above Order for Transcript by receipt of a copy thereof admitted this 17th day of June 1946.

(Signed) LESLIE E. POOLE,
Official Court Reporter.

Filed June 17, 1946.

223 *Admission of service of notice of appeal*

Service of the Notice of Appeal to the Supreme Court of the State of Idaho from that certain judgment on verdict made and entered herein on March 20, 1946, this 14th day of June 1946, is hereby admitted.

(Signed) A. A. MERRILL,
Counsel for Plaintiff.

Filed June 19, 1946.

224 *Admission of service of praecipe for transcript of record on appeal*

Service of Praecipe for Transcript of Record on Appeal to the Supreme Court of the State of Idaho from that certain judgment on verdict made and entered herein on March 20, 1946, this 14 day of June 1945, is hereby admitted.

(Signed) A. A. MERRILL,
Counsel for Plaintiff.

Filed June 19, 1946.

225 *Acknowledgment of service of reporter's transcript*

Service by the Clerk of the above-entitled Court of the reporter's transcript heretofore prepared and lodged in the above-entitled cause, and receipt of two (2) copies of said transcript is hereby acknowledged.

Dated this 19th day of July 1946.

(Signed) John A. Carver,
JOHN A. CARVER,
United States Attorney for the District of Idaho.
E. H. Casterlin,
E. H. CASTERLIN,
Assistant U. S. Attorney for the District of Idaho.

Filed July 22, 1946.

226 *Acknowledgment of service of reporter's transcript*

Service by counsel for the Appellant of the reporter's transcript, heretofore prepared and lodged in the above-entitled cause, and receipt of one copy of said reporter's transcript, is hereby acknowledged.

(Signed) A. A. MERRILL,
Attorney for Respondents,
Residence and P. O. Address: Idaho Falls, Idaho.

Filed July 22, 1946.

227 In District Court of Bonneville County

Stipulation settling reporter's transcript

July 26, 1946

It is hereby stipulated that the reporter's transcript of the evidence and proceedings had at the trial of the above-entitled cause has been examined by counsel for the respective parties, and that there are no errors therein, and that the same may be settled as rendered and certified by the official reporter, and when so settled

or deemed by law to have been settled the same may be used as the reporter's transcript on appeal herein.

Dated July 26, 1946.

(Signed) E. H. CASTERLIN,
Boise, Idaho,
Assistant U. S. Attorney, for the appellant.
(Signed) A. A. MERRILL,
Idaho Falls, Idaho,
For the respondent.

Filed July 29, 1936.

228 In District Court of Bonneville County

Order settling reporter's transcript

July 29, 1946

In this cause a reporter's transcript having been heretofore prepared and lodged with the Clerk of the above-entitled Court, and served upon counsel for the respective parties, as required by law; and counsel having examined said transcript, and having heretofore stipulated that the same is free from errors and omissions, and that the same may be settled, allowed, and approved by the court as a part of the record on appeal; and the appellant having requested that said transcript be settled and allowed:

Now, therefore, it is hereby ordered, that said reporter's transcript be, and the same is hereby settled, allowed, and approved as a true and correct transcript of the proceedings and testimony had and adduced at the trial of the said cause, and the same is hereby made a part of the record and transcript on appeal of this cause to the Supreme Court of the State of Idaho, for use as such on said appeal.

Dated this 29th day of July 1946.

(Signed) C. J. TAYLOR,
District Judge.

Filed July 29th, 1946.

229 [Clerk's certificate to foregoing transcript omitted in printing.]

231 In the Supreme Court of the State of Idaho

Anouncement of composition of court

Oct. 9, 1946

Justice Budge announced that Chief Justice Ailshie would not be present at this term and that District Judge Porter had been called to sit in his stead. * * *

232 In the Supreme Court of the State of Idaho

[Title omitted.]

Minute entry of argument

Justice Budge announced that Justice Holden deemed himself disqualified to sit in the case and that District Judge Glennon had been called to sit in his stead.

The above cause was then argued on the merits by E. H. Casterlin for appellant, and by A. A. Merrill for respondents. Mr. Casterlin was granted permission to file citations. At the close of the argument the cause was ordered taken under advisement to be later assigned in the regular assignment of cases.

233 In the Supreme Court of the State of Idaho

No. 7325

Pocatello, October Term, 1946

A. A. MERRILL AND N. D. MERRILL, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS., PLAINTIFFS and RESPONDENTS

v.

THE FEDERAL CROP INSURANCE CORPORATION, A CORPORATION, DEFENDANT and APPELLANT

Filed November 26, 1946. Clay Koelsch, Clerk.

Opinion

Filed Nov. 26, 1946

Appeal from the District Court of the Ninth Judicial District of the State of Idaho, in and for Bonneville County. Honorable C. J. Taylor, District Judge.

Action on contract of insurance. Judgment for plantiffs. Defendant appeals. Judgment affirmed.

John A. Carver and E. H. Casterlin for appellants.

A. A. Merrill for respondents.

PORTER, D. J.

The appellant, The Federal Crop Insurance Corporation, is a body corporate created by Congress as an agency of and within the Department of Agriculture for the purpose of insuring crops against loss from drouth and other causes. The respondents,

A. A. Merrill and N. D. Merrill, are copartners doing business under the firm name of Merrill Bros. The respondents own and operate 460 acres of land located in Bonneville County. In the fall of the year 1944 the respondents planted 400 acres of such land in fall wheat. This wheat winter killed and in the spring
234 of 1945 the respondents recultivated such land and planted the same together with 60 additional acres in Early Bart spring wheat. In March 1945, the respondents consulted with the Bonneville County Agricultural Conservation Committee, the admitted agent of the appellant, with reference to securing insurance from the appellant covering the 460 acres of wheat. The respondents advised the Committee that 400 acres of this wheat was to be planted upon ground which had been in fall wheat; that the fall wheat had winter killed and the ground been recultivated. The Bonneville County Committee thereupon advised the respondents that all of such wheat crop was eligible for insurance in the appellant. Accordingly, the respondents on March 26, 1945, signed a form of application for insurance covering the 460 acres for the years 1945, 1946, and 1947. The application on the same date was recommended by the Bonneville County Agricultural Conservation Committee for acceptance. The respondents were thereafter notified under date of May 28, 1945, from the Denver office of the appellant that their application had been duly accepted by the authorized agent of appellant; and that the insurance contract consisted of the accepted application and the appropriate rules and regulations of the appellant.

The crop of respondents made a normal growth until in July 1945, when the same was substantially injured by drouth. The drouth equally affected both the 400 acres and the 60 acres. The fact that the 400 acres of wheat was planted on ground previously sown to fall wheat did not enhance the loss. On August 7, 1945, respondents notified appellant of their damage. The extent of the loss was duly appraised by the agents of the appellant on September 21, 1945; and based upon such appraisement, proof of loss was duly made by the respondents on such date. In November 1945, the respondents were advised that the premium on such
235 insurance contract was due in the sum of $309.47. Respondents paid such sum on the 8th day of November 1945, to the appellant and the appellant at all times since has retained such premium. Sometime thereafter the appellant notified the respondents that it would not pay their loss as the crop was not insurable under its regulations which did not authorize the insuring of a spring wheat crop in the year 1945 upon land previously planted to fall wheat in 1944. Thereafter, on January 19, 1946, suit was instituted by the respondents against the appellant to

recover for the loss sustained. The case was tried before a jury in March 1946, and resulted in a verdict and judgment in favor of respondents for the sum of $8,960.30. From this judgment the appellant has prosecuted this appeal.

There is no dispute between the parties but what the judgment fairly represents the amount of loss sustained by the respondents. The appellant admits that the insurance contract covers the 60 acres of what in question but urges that there was no separate proof of loss on such 60 acres upon which to predicate a judgment. In view of our disposition of this case such contention is immaterial.

The appellant has assigned 9 specifications of error. However, all these specifications of error tend to raise but the single question as to whether or not the contract of insurance on the 400 acres was void by reason of the regulations of the appellant to the effect that spring wheat planted on ground which had been sown to winter wheat would not be insured for the year 1945. It appears that the appellant corporation adopted Part 414 of Wheat Crop Insurance Regulations on January 29, 1945, approved it on February 5, 1945, and filed it with the Archivist on the same day and pub-
236 lished it in 10 Federal Register 1585 on February 7, 1945.

This regulation includes, among other things, the following: "The term wheat crop shall not include volunteer wheat not growing with the seeded wheat crop, wheat seeded with a mixture of flax or other small grains or vetch, true type winter wheat seeded in the spring, winter wheat in the 1945 crop year, and spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year." The respondents knew nothing about the existence of this regulation at the time they made application for insurance nor at any time until they were advised that the appellant claimed the insurance contract was void by reason of such regulation and refused to pay the loss.

The rule that an insurance company will not be permitted to defeat a recovery upon a policy issued by it, by proving the existence of facts which would render it void, where it had full knowledge of such facts when the policy was issued, is well established by the authorities in this state. Carroll v. Hartford Fire Insurance Company, 28 Idaho 466. Young v. California Insurance Company, 55 Idaho 688.

It is likewise well established that the knowledge of the agent is the knowledge of the principal in insurance cases. Maybee v. Continental Casualty Company, 37 Idaho 667. Carroll v. Hartford Fire Insurance Company, supra.

These rules would fix the liability of the appellant if it were a private corporation. However, the appellant urges that it is a

governmental agency; that the regulation in question has the force and effect of a law; that under the federal Register Act the respondents had constructive notice of its contents; and that the same was binding upon the respondents. The regulation in question is not a law. The appellant had authority to insure wheat crops for the years 1945, 1946, and 1947, but as a matter of policy determined not to insure in 1945 spring wheat planted on
237 ground sown to fall wheat in 1944 and issued such regulation as a declaration of policy for the guidance of its officers and agents. We are not concerned with the effect of such regulation if the respondents had known of its existence, as it must be conceded that the respondents had no actual knowledge of it. Likewise, the ultimate question in this case is not one of constructive notice but of equitable estoppel. Under the facts in this case all of the elements of equitable estoppel are present. The appellant in effect contends that estoppel is not applicable to it as an agency of the government. This court in State v. Twin Falls etc. Water Co., 30 Idaho 41, spoke as follows:

"Generally the doctrine of equitable estoppel does not apply to the government (16 Cyc. 780). There are, however, exceptions to this rule. (See United States v. Stinson, 125 Fed. 907, 60 C. C. A. 615; United States v. Willamette Valley etc. Road Co., 54 Fed. 807.) In the Stinson case the court said: 'When the government seeks its rights at the hands of a court, equity requires that the rights of others as well, should be protected. (Carr v. United States, 98 U. S. 432, 438, 25 L. Ed. 209, 211.) The government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable inquiry. The substantial considerations underlying the doctrine of estoppel apply to government as well as to individuals.'"

See also Woodruff v. Trapnall, 51 U. S. 190, 13 L. ed. 209.

Here we are not dealing directly with the government as such nor with a duly enacted law, but are dealing with a corporation created as an agency of the Department of Agriculture and with one of its regulations adopting a policy with respect to the conduct of its proprietary insurance business. The respondents purchased the insurance in question in good faith and thereafter suffered a loss. The appellant through its agent had knowledge of the material facts. It is now estopped from denying the validity of the insurance contract.

The judgment of the trial court is affirmed. Costs awarded to respondents.

BUDGE, GIVENS, and MILLER, JJ., and GLENNON, D. J., concur.

AILSHIE, C. J., did not sit at the hearing or participate herein.
HOLDEN, J., deeming himself disqualified, did not sit at the hearing or participate herein.

238 In the Supreme Court of the State of Idaho

A. A. MERRILL AND N. D. MERRILL, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS., PLAINTIFFS AND RESPONDENTS

v.

THE FEDERAL CROP INSURANCE CORPORATION, A CORPORATION, DEFENDANT AND APPELLANT

Judgment

Nov. 26, 1946

The decision in this cause, announced this day by District Judge Porter, affirms the judgment of the District Court of the Ninth Judicial District of the State of Idaho, in and for Bonneville County. Costs awarded to respondents in the amount of $32.00.

BUDGE, GIVENS, and MILLER, JJ.; and GLENNON, D. J., concur.

AILSHIE, C. J., did not sit at the hearing or participate in the decision.

HOLDEN, J., deeming himself disqualified, did not sit at the hearing or participate herein.

259 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1947

Supreme Court of the United States

Order allowing certiorari

Filed April 28, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Idaho is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings which accompanied the petition shall be treated as though filed in response to such writ.